

D R A F T

FOR DISCUSSION ONLY

UNIFORM CONTROLLED SUBSTANCES ACT (198_)

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ON UNIFORM STATE LAWS

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UNIFORM CONTROLLED SUBSTANCES ACT (198_)

With Prefatory Note and Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated final law.

DRAFTING COMMITTEE TO REVISE
UNIFORM CONTROLLED SUBSTANCES ACT

DAVID A. GIBSON, P.O. Box 1767, Brattleboro, VT 05301, Chairman

JAY E. BURINGRUD, Legislative Council, State Capitol, Bismarck,
ND 58505, Drafting Liaison

RICHARD L. BRAUN, Campbell University, School of Law, Buies
Creek, NC 27506

ROBINSON O. EVERETT, 450 E Street, N.W., Washington, DC 20442

ALBERTO FERRER, P.O. Box 8513, Santurce, PR 00910

PATRICK C. GUILLOT, Suite 3300, InterFirst Plaza, Dallas,
TX 75202

G. THOMAS SANDBACH, 1112 King Street, Wilmington, DE 19801

PHILLIP CARROLL, 120 East Fourth Street, Little Rock, AR 72201,
President (Member Ex Officio)

WILLIAM J. PIERCE, University of Michigan Law School, Ann
Arbor, MI 48109, Executive Director

GENE N. LEBRUN, P.O. Box 8110, Rapid City, SD 57709, Chairman,
Division F (Member Ex Officio)

Review Committee

JOHN W. THOMAS, P.O. Box 1792, Columbia, SC 29202, Chairman

CHARLES M. CROOK, 2 Dexter Avenue, Montgomery, AL 36104

GARY R. GEORGE, Room 115 South, State Capitol Building, Madison,
WI 53702

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611
(312) 321-9710

1 UNIFORM CONTROLLED SUBSTANCES ACT (198_)

2 PREFATORY NOTE

3
4 The subject matter of the Uniform Controlled
5 Substances Act affects many segments of our society,
6 including the practices of medicine, pharmacy,
7 veterinary medicine, and dentistry, research and
8 development of drugs, commercial production of drugs
9 and their distribution system, and law enforcement
10 activities. Indeed, virtually all aspects of our every
11 day life experience consequences from the use and abuse
12 of controlled substances.

13 The present Act was adopted in 1970 and was
14 developed with the close cooperation of the United
15 States Government. The Congress of the United States
16 enacted a controlled substances act approximately three
17 months after the National Conference approved the
18 Uniform Act in 1970, and the provisions of the federal
19 law and the Uniform Act were designed to be
20 complementary, with many provisions being identical.
21 The federal law was amended in 1984, and again in 1986,
22 making significant changes to the federal Controlled
23 Substances Act. The task of this drafting committee
24 has been to review the amendments to the federal law
25 and to determine what revisions should be undertaken by
26 the Conference in light thereof and in light of other
27 developments among the several states. Of overriding
concern to the drafting committee is the need for
consistency with federal law. The major policy
determinations made by the drafting committee may be
summarized as follows:

1 1. The committee has determined that the
2 definitions contained in the Uniform Act should be
3 revised so as to include amendments adopted by
4 Congress. Also, the identity of the substances listed
5 in the five schedules of controlled substances has been
6 updated to reflect additions, deletions, and changes
7 approved by the Congress and by the federal agencies
8 responsible for scheduling changes.

9 2. The Uniform Act, as adopted, contemplates
10 that adopting states should take prompt action in
11 controlling substances in accordance with additions,
12 deletions, or changes undertaken by the federal
13 government. The provisions in the original Act have
14 caused difficulties with some states which view the
15 provisions as improperly delegating state authority to
16 the federal government. The drafting committee is

1 recommending amendments to Section 201 of the Uniform
2 Act in an attempt to alleviate that problem.

3 3. With respect to the tests existing for
4 placement of substances in Schedule I (Section 203 of
5 the Uniform Act), a gap appears to exist with respect
6 to substances which have no currently accepted medical
7 use in treatment in the United States, but which do not
8 have a high potential for abuse. In order to eliminate
9 that gap, the drafting committee has prepared possible
alternatives for the tests for Schedule I drugs as well
as for the other schedules. Such alternatives,
however, would result in a substantial inconsistency
with the existing federal statutes and the drafting
committee has determined at this stage that it is
preferable not to deviate from the federal language
despite the existence of this gap.

10 4. Analogues of controlled substances are
11 substances whose chemical structure is substantially
12 similar to the chemical structure of controlled
13 substances having a high potential for abuse, but which
14 have not yet been determined to be included as Schedule
15 I or II substances. The federal amendments adopted in
16 1986 provide for criminal penalties with respect to
17 violations of the federal act as they relate to
18 distribution, sale, etc., of analogues to Schedule I
substances. Because of the lack of certainty in the
definition of an analogue, as one being "substantially
similar" to the chemical structure of a controlled
substance, the drafting committee determined that
analogues should be the subject of emergency scheduling
authority by the States, as set forth in the
recommendation of the addition of subsection (e) to
Section 210 of the Uniform Act.

19 5. Diversion of controlled substances which may
20 be used and distributed legally to an illicit channel
21 of distribution or use has been identified as a major
22 problem in connection with the administration of the
23 Uniform Act. Accordingly, the drafting committee is
24 recommending the addition of Section 309 to the Uniform
Act, in order to encourage regulatory agencies of the
several states to identify substances that have been so
diverted and to cooperate in efforts to prevent and
control illicit diversion of controlled substances.

25 6. Substantial changes have been made to the
penalty and offense provisions as follows:

26 A. A provision to be included in Section 402
27 concerning persons who unlawfully keep, maintain,
manage, or control a place with knowledge of its use

1 and concerning the unlawful manufacturing of controlled
2 substances.

3 B. A provision to be added to Section 403 so as
4 to authorize prosecution for use of communication
5 facilities in connection with commission of violations
6 of the Uniform Act.

7 C. A provision to be added to Section 407 with
8 respect to distribution of controlled substances to
9 minors and the manufacture of controlled substances
10 within one thousand feet of public or private schools
11 and colleges.

12 D. Adoption of a new section, which would be
13 Section 408, providing for prosecution of persons over
14 18 who utilize persons under the age of 18 in
15 connection with illegal drug operations.

16 E. Addition of a provision to Section 410 which
17 would provide for prosecution of individuals in
18 connection with continuing criminal enterprises.

19 F. Addition of Section 411 to provide a
20 treatment option in connection with persons who are
21 convicted of violations of the Uniform Act.

22 G. The drafting committee is recommending
23 elimination of the amendments to the Uniform Act
24 adopted by the conference in 1973 which provided for
25 decriminalization of possession of small amounts of
26 marijuana for personal use.

27 7. The drafting committee is recommending
substantial amendments to the forfeiture provisions of
Section 505 of the Uniform Act. Of particular
difficulty for the drafting committee is the effect of
the federal provisions on the capability of a defendant
to obtain counsel where fees paid to counsel might be
subject to seizure while prosecution was pending. In
order to try to strike a proper balance between the
legitimate government interest in forfeiture of fruits
of violations of the Controlled Substances Act, and the
Sixth Amendment right to counsel, we are recommending
that payment of funds for services rendered or to be
rendered, even though otherwise forfeitable, not be
subject to forfeiture or seizure so long as the
transaction is not fraudulent, and that any litigation
as to whether or not such a transaction was fraudulent
be delayed until the conclusion of criminal
proceedings.

1 The drafting committee also determined not to
2 include provisions for criminal forfeiture proceedings
3 such as are found in the federal amendments to the
4 Controlled Substances Act.
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1 UNIFORM CONTROLLED SUBSTANCES ACT

2
3 ARTICLE I

4 {DEFINITIONS}

5
6 SECTION 101. {DEFINITIONS.} As used in this
7 [Act]:

8 (a) "Administrator" means the direct application
9 of a controlled substance, whether by injection,
10 inhalation, ingestion, or any other means, to the body
11 of a patient or research subject by:

12 (1) a practitioner (or, in ~~his~~ the
13 practitioner's presence, by ~~his~~ the practitioner's
14 authorized agent); or

15 (2) the patient or research subject at the
16 direction and in the presence of the practitioner.

17 (b) "Agent" means an authorized person who acts
18 on behalf of or at the direction of a manufacturer,
19 distributor, or dispenser. ~~It~~ The term does not
20 include a common or contract carrier, public
21 warehouseman, or employee of the carrier or
22 warehouseman, when acting in the usual and lawful
23 course of the carrier's or warehouseman's business.

24 (c) ~~"Bureau"-means-the-Bureau-of-Narcotics-and~~
25 ~~Dangerous-Drugs,-United-States-Department-of-Justice,-~~
26 ~~or-its-successor-agency.~~ "Control" means to add a drug
27 or other substance, or immediate precursor, to a

1 schedule, whether by transfer from another schedule or
2 otherwise.

3 (d) "Controlled substance" means a drug,
4 substance, or immediate precursor included in Schedules
5 I through V of Article II.

6 (e) (1) "Controlled substance analogue" means a
7 substance:

8 (i) the chemical structure of which is
9 substantially similar to the chemical structure of a
10 controlled substance in Schedule I or II; and

11 (ii) which has a stimulant, depressant, or
12 hallucinogenic effect on the central nervous system
13 substantially similar to or greater than the stimulant,
14 depressant, or hallucinogenic effect on the central
15 nervous system of a controlled substance in Schedule I
16 or II.

17 (2) The term does not include:

18 (i) a controlled substance;

19 (ii) a substance for which there is an
20 approved new drug application;

21 (iii) with respect to a particular person
22 any substance, if an exemption is in effect for
23 investigational use, for that person, under section 505
24 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C.
25 355] to the extent conduct with respect to the
26 substance is pursuant to the exemption; or

27

1 (iv) any substance to the extent not
2 intended for human consumption before the exemption
3 takes effect.

4 (f) "Counterfeit substance" means a controlled
5 substance which, or the container or labeling of which,
6 without authorization, bears the trademark, trade name,
7 or other identifying mark, imprint, number, or device,
8 or any likeness thereof, of a manufacturer,
9 distributor, or dispenser other than the person who in
10 fact manufactured, distributed, or dispensed the
11 substance.

12 ~~(f)~~ (g) "Deliver" or "delivery" means the
13 actual, constructive, or attempted transfer from one
14 person to another of a controlled substance, whether or
15 not there is an agency relationship.

16 ~~(g)~~ (h) "Depressant or stimulant substance"
17 means:

18 (1) a drug containing any quantity of (i)
19 barbituric acid or any of the salts of barbituric acid;
20 or (ii) any derivative of barbituric acid which has
21 been designated by the United States Secretary of
22 Health and Human Services as habit-forming under 21
23 U.S.C. 352(d);

24 (2) a drug containing any quantity of (i)
25 amphetamine or any of its isomers; (ii) any salt of
26 amphetamine or any salt of an isomer of amphetamine; or
27 (iii) any substance that the United States Attorney

1 General, after investigation, has found to be, and by
2 regulation designated as, habit-forming because of its
3 stimulant effect on the central nervous system;

4 (3) lysergic acid diethylamide; or

5 (4) any drug containing any quantity of a
6 substance that the United States Attorney General,
7 after investigation, has found to have, and by
8 regulation designated as having, a potential for abuse
9 because of its depressant or stimulant effect on the
10 central nervous system or its hallucinogenic effect.

11 (i) "Dispense" means to deliver a controlled
12 substance to an ultimate user or research subject by or
13 pursuant to the lawful order of a practitioner,
14 including the prescribing, administering, packaging,
15 labeling, or compounding necessary to prepare the
16 substance for that delivery.

17 ~~(h)~~ (j) "Dispenser" means a practitioner who
18 dispenses.

19 ~~(i)~~ (k) "Distribute" means to deliver other than
20 by administering or dispensing a controlled substance.

21 ~~(j)~~ (l) "Distributor" means a person who
22 distributes.

23 ~~(k)~~ (m) "Drug" means (1) substances recognized
24 as drugs in the official United States Pharmacopoeia,
25 official Homeopathic Pharmacopoeia of the United
26 States, or official National Formulary, or any
27 supplement to any of them; (2) substances intended for

1 use in the diagnosis, cure, mitigation, treatment, or
2 prevention of disease in man or animals; (3) substances
3 (other than food) intended to affect the structure or
4 any function of the body of man or animals; and (4)
5 substances intended for use as a component of any
6 article specified in clause (1), (2), or (3) of this
7 subsection sentence. ~~It~~ The term does not include
8 devices or their components, parts, or accessories.

9 (n) "Drug Enforcement Administration" means the
10 Drug Enforcement Administration in the United States
11 Department of Justice, or its successor agency.

12 ~~{1}~~ (o) "Immediate precursor" means a substance;

13 (1) which the [appropriate person or agency]
14 has found to be and by rule designates as being the
15 principal compound commonly used, or produced primarily
16 for use, and in the manufacture of a controlled
17 substance;

18 (2) which is an immediate chemical
19 intermediary used or likely to be used in the
20 manufacture of a the controlled substance; and

21 (3) the control of which is necessary to
22 prevent, curtail, or limit the manufacture of the
23 controlled substance.

24 (p) "Isomer" means the optical isomer, except as
25 used in Sections 101(s)(4), 204(d), 206(b)(4), 208(b),
26 and 210(d). As used in Sections 204(d), 208(b), and
27 210(d), the term means any optical, positional, or

1 geometric isomer. As used in Sections 101(s)(4) and
2 206(b)(4), the term means any optical or geometric
3 isomer.

4 (m) (g) "Manufacture" means the production,
5 preparation, propagation, compounding, conversion, or
6 processing of a controlled substance, either directly
7 or indirectly or by extraction from substances of
8 natural origin, or independently by means of chemical
9 synthesis, or by a combination of extraction and
10 chemical synthesis, and includes any packaging or
11 repackaging of the substance or labeling or relabeling
12 of its container, ~~except that this.~~ The term does not
13 include the preparation or compounding of a controlled
14 substance by an individual for ~~his~~ the individual's own
15 use ~~or.~~ The term does not include the preparation,
16 compounding, packaging, or labeling of a controlled
17 substance:

18 (1) by a practitioner as an incident to ~~his~~
19 the practitioner's administering or dispensing of a
20 controlled substance in the course of ~~his~~ the
21 practitioner's professional practice, or

22 (2) by a practitioner, or by ~~his~~ the
23 practitioner's authorized agent under ~~his~~ the
24 practitioner's supervision, for the purpose of, or as
25 an incident to, research, teaching, or chemical
26 analysis and not for sale.

1 (n) (r) "Marihuana" means all parts of the plant
2 **Cannabis sativa-L.**, whether growing or not; the seeds
3 thereof; the resin extracted from any part of the
4 plant; and every compound, manufacture, salt,
5 derivative, mixture, or preparation of the plant, its
6 seeds or resin. ~~It~~ The term does not include the
7 mature stalks of the plant, fiber produced from the
8 stalks, oil or cake made from the seeds of the plant,
9 any other compound, manufacture, salt, derivative,
10 mixture, or preparation of the mature stalks (except
11 the resin extracted therefrom), fiber, oil, or cake, or
12 the sterilized seed of the plant which is incapable of
13 germination.

14 (e) (s) "Narcotic drug" means any of the
15 following, whether produced directly or indirectly by
16 extraction from substances of vegetable origin, or
17 independently by means of chemical synthesis, or by a
18 combination of extraction and chemical synthesis:

19 (1) Opium and, opiate, and any salt,
20 compound, derivative, ~~or preparation~~ of opium or
21 opiate, including their isomers, esters, ethers, salts,
22 and salts of isomers, esters, and ethers, whenever the
23 existence of the isomers, esters, ethers, and salts is
24 possible within the specific chemical designation.

25 (2) ~~--Any salt, compound, isomer, derivative,~~
26 ~~or preparation thereof which is chemically equivalent~~
27 ~~or identical with any of the substances referred to in~~

1 ~~clause-17-but~~ The term does not including include the
2 isoquinoline alkaloids of opium.

3 ~~(3)~~ (2) ~~Opium-poppy-and-poppy~~ Poppy straw and
4 concentrate of poppy straw.

5 ~~(4)~~ (3) ~~Coca leaves and-any-salt,-compound,~~
6 ~~derivative,-or-preparation-of-coca-leaves,-and-any~~
7 ~~salt,-compound,-isomer,-derivative,-or-preparation~~
8 ~~thereof-which-is-chemically-equivalent-or-identical~~
9 ~~with-any-of-these-substances,-but-not-including~~
10 decoctinized, except coca leaves or-extractions and
11 extracts of coca leaves from which do-not-contain
12 cocaine or, ecgonine, and derivatives of ecgonine or
13 their salts have been removed.

14 (4) Cocaine, or any salt, isomer, or salt of
15 isomer thereof.

16 (5) Ecgonine, or any derivative, salt,
17 isomer, or salt of isomer thereof.

18 (6) Any compound, mixture, or preparation
19 containing any quantity of any substance referred to in
20 paragraphs (1) through (5).

21 ~~(p)~~ (t) "Opiate" means any substance having an
22 addiction-forming or addiction-sustaining liability
23 similar to morphine or being capable of conversion into
24 a drug having addiction-forming or addiction-sustaining
25 liability. ~~It~~ The term includes its racemic and
26 levorotatory forms. The term does not include, unless
27 specifically designated as controlled under Section 201

1 ~~of-this-Act~~, the dextrorotatory isomer of 3-methoxy-n-
2 methylmorphinan and its salts (dextromethorphan). ~~It~~
3 ~~does-not-include-its-racemic-and-leverotatory-forms-~~

4 {g} (u) "Opium poppy" means the plant of the
5 species *Papaver somniferum* L., except its seeds.

6 {r} (v) "Person" means individual, corporation,
7 government or governmental subdivision or agency,
8 business trust, estate, trust, partnership or
9 association, or any other legal entity.

10 {s} (w) "Poppy straw" means all parts, except
11 the seeds, of the opium poppy, after mowing.

12 {t} (x) "Practitioner" means+

13 {1}--A a physician, dentist, veterinarian,
14 scientific investigator, ~~or-other-person-licensed,~~
15 ~~registered-or-otherwise-permitted-to-distribute,~~
16 ~~dispense,-conduct-research-with-respect-to-or-to~~
17 ~~administer-a-controlled-substance-in-the-course-of~~
18 ~~professional-practice-or-research-in-this-State,~~

19 {2}--A pharmacy, hospital, or other
20 ~~institution~~ person licensed, registered, or otherwise
21 permitted, by this State, to distribute, dispense,
22 conduct research with respect to ~~or-to,~~ administer, or
23 to use in teaching or chemical analysis, a controlled
24 substance in the course of professional practice or
25 research ~~in-this-State.~~

26 {u} (y) "Production" includes the manufacture,
27 planting, cultivation, growing, or harvesting of a

1 controlled substance.

2 ~~{v}~~ (z) "State," when applied to a part of the
3 United States, includes any state, district,
4 commonwealth, territory, insular possession thereof,
5 and any area subject to the legal authority of the
6 United States of America.

7 ~~{w}~~ (aa) "Ultimate user" means ~~a-person~~ an
8 individual who lawfully possesses a controlled
9 substance for ~~his~~ the individual's own use or for the
10 use of a member of ~~his~~ the individual's household or
11 for administering to an animal owned by ~~him~~ the
12 individual or by a member of ~~his~~ the individual's
13 household.

14 COMMENT ON AMENDMENT

15 The definitions of "agent," "immediate
16 precursor," and "practitioner" are revised to conform
17 to the definitions of "agent," "immediate precursor,"
18 and "practitioner" in the federal Controlled Substances
19 Act, 21 U.S.C. 802(3), (21), and (23), as enacted in
20 1970. The definition of "bureau" is deleted because
21 federal administration is by the Drug Enforcement
22 Administration. In subsection (d) "included" is used
23 to refer to substances controlled on adoption of the
24 Act (those substances "listed in Sections 204, 206,
25 208, 210, and 212) and to substances controlled under
26 Section 601 and administrative action. The definition
27 of "controlled substance analogue" is based on the
definition contained in the federal Act, as added by
the Anti-Drug Abuse Act of 1986, §§ 1201-1204 (the
"Controlled Substance Analogue Enforcement Act of
1986"). The definition of "drug" is derived from the
Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
321(g)(1). The definitions of "control," "depressant
or stimulant substance," and "isomer" are taken from
the federal Controlled Substances Act, 21 U.S.C.
802(5), (9), and (14). "Control" and "depressant or
stimulant substance" were contained in the federal Act,
as enacted in 1970. "Isomer" was added to the federal
Act in 1984, and amended in 1986 and is further revised

1 to reflect the use of the term in Sections 101(s)(4),
2 208(b), and 210(d). The definition of marihuana is
3 revised to apply to all subtypes or species of
4 **Cannabis**, regardless of the gross botanical
5 characteristics of individual species, e.g., **Cannabis**
6 **sativa L.**, **Cannabis americanus**, **Cannabis indica**, and
7 **Cannabis ruderalis**. There may be a question on whether
8 adding "or" in subsection (q) to parallel the language
9 in the federal Act causes confusion. See the
10 introductory paragraph of subsection (s) and the
11 introductory paragraph of Section 206(b) where "or" is
12 not used. The definition of "narcotic drug" is revised
13 to conform to the definition of "narcotic drug" as
14 contained in the federal Controlled Substances Act, 21
15 U.S.C. 802(17), as amended in 1984. However, the
16 deletion of "opium poppy" in subsection (s)(2) results
17 in a variation from the description in Section
18 206(b)(3).

11 ARTICLE II

12 {STANDARDS AND SCHEDULES}

14 SECTION 201. {AUTHORITY TO CONTROL.}

15 (a) The [appropriate person or agency] shall
16 administer this [Act] and may add substances to or
17 delete or reschedule ~~all substances enumerated listed~~
18 ~~in the-schedules-in-sections~~ Section 204, 206, 208,
19 210, or 212 pursuant to the procedures of [insert
20 appropriate ~~State~~ state administrative procedures code
21 section].

22 (1) In making a determination regarding a
23 substance, the [appropriate person or agency] shall
24 consider the following:

25 ~~{1}~~ (i) the actual or relative potential
26 for abuse;

1 {2} (ii) the scientific evidence of its
2 pharmacological effect, if known;

3 {3} (iii) the state of current scientific
4 knowledge regarding the substance;

5 {4} (iv) the history and current pattern of
6 abuse;

7 {5} (v) the scope, duration, and
8 significance of abuse;

9 {6} (vi) the risk to the public health;

10 {7} (vii) the potential of the substance to
11 produce psychic or physiological dependence liability;
12 and

13 {8} (viii) whether the substance is an
14 immediate precursor of a controlled substance already
15 ~~controlled-under-this-Article.~~

16 (2) The [appropriate person or agency] may
17 consider findings of the federal Food and Drug
18 Administration or the Drug Enforcement Administration
19 as prima facie evidence relating to one or more of the
20 factors in connection with its determination.

21 (b) After considering the factors enumerated in
22 subsection (a), the [appropriate person or agency]
23 shall make findings with respect thereto and ~~issue~~
24 adopt a rule controlling the substance ~~if-he-{it}-finds~~
25 upon finding the substance has a potential for abuse.

26 (c) If the [appropriate person or agency]
27 designates a substance as an immediate precursor,

1 substances ~~which~~ that are precursors of the controlled
2 precursor ~~shall~~ are not be subject to control solely
3 because they are precursors of the controlled
4 precursor.

5 ALTERNATIVE A

6 (d) If ~~any~~ a substance is designated,
7 rescheduled, or deleted as a controlled substance under
8 ~~Federal~~ federal law and notice thereof is given to the
9 [appropriate person or agency], the [appropriate person
10 or agency] shall similarly control the substance under
11 this [Act] after the expiration of 30 days from
12 publication in the Federal Register of a final order
13 designating ~~a~~ the substance as a controlled substance
14 or rescheduling or deleting ~~a~~ the substance, unless
15 within that 30-day period, the [appropriate person or
16 agency] or an interested party objects to inclusion,
17 rescheduling, or deletion. ~~In-that-case~~ If no
18 objection is made, the [appropriate person or agency]
19 shall publish an order designating, rescheduling, or
20 deleting the substance. If an objection is made, the
21 [appropriate person or agency] shall publish the
22 reasons for objection and afford all interested parties
23 an opportunity to be heard. At the conclusion of the
24 hearing, the [appropriate person or agency] shall
25 publish ~~his-{its}~~ the decision, which ~~shall-be~~ is final
26 unless altered by statute or as the result of judicial
27 review. Upon publication of objection to inclusion,

1 rescheduling, or deletion under this [Act] by the
2 [appropriate person or agency], control under this
3 [Act] is stayed until the [appropriate person or
4 agency] publishes ~~his-fits~~ the decision.

5 ALTERNATIVE B

6 (d) If ~~any~~ a substance is designated,
7 rescheduled, or deleted as a controlled substance under
8 ~~Federal~~ federal law and notice thereof is given to the
9 [appropriate person or agency], the [appropriate person
10 or agency] shall similarly control the substance under
11 this [Act] ~~after-the-expiration-of-30-days-from~~
12 ~~publication-in-the-Federal-Register-of-a-final-order~~
13 ~~designating-a-substance-as-a-controlled-substance-or~~
14 ~~rescheduling-or-deleting-a-substance,--unless-within~~
15 ~~that-30-day-period,--the-{appropriate-person-or-agency}~~
16 ~~objects-to-inclusion,--rescheduling,--or-deletion.--In~~
17 ~~that-case,--the-{appropriate-person-or-agency}-shall~~
18 ~~publish-the-reasons-for-objection-and-afford-all~~
19 ~~interested-parties-an-opportunity-to-be-heard.--At-the~~
20 ~~conclusion-of-the-hearing,--the-{appropriate-person-or~~
21 ~~agency}-shall-publish-his-fits-decision,--which-shall~~
22 ~~be-final-unless-altered-by-statute.--Upon-publication~~
23 ~~of-objection-to-inclusion,--rescheduling,--or-deletion~~
24 ~~under-this-Act-by-the-{appropriate-person-or-agency},~~
25 ~~control-under-this-Act-is-stayed-until-the-{appropriate~~
26 ~~person-or-agency}-publishes-his-fits-decision~~ pursuant

27

1 to the procedures of [insert appropriate state
2 administrative procedures code section].

3 (e) If the [appropriate person or agency] finds
4 that the rescheduling of a controlled substance
5 analogue in Schedule I on an emergency basis is
6 necessary to avoid an imminent hazard to the public
7 safety, the [appropriate person or agency], by order
8 and without regard to the requirements of subsection
9 (a), may schedule the controlled substance analogue in
10 Schedule I. The scheduling of a substance under this
11 subsection expires one year after the issuance of the
12 scheduling order. With respect to the finding of an
13 imminent hazard to the public safety, the [appropriate
14 person or agency] shall consider only whether the
15 substance has been scheduled on a temporary basis under
16 federal law or those factors set forth in subsections
17 (a)(1)(iv), (v), and (vi), including actual abuse,
18 diversion from legitimate channels, and clandestine
19 importation, manufacture, or distribution. A
20 scheduling order may not be issued under this
21 subsection until the [appropriate person or agency]
22 initiates a rulemaking proceeding under subsection (a)
23 with respect to the substance. A scheduling order
24 issued under this subsection must be vacated upon the
25 conclusion of the rulemaking proceeding initiated under
26 subsection (a) with respect to the substance.

1 (f) Authority to control under this section does
2 not extend to distilled spirits, wine, malt beverages,
3 or tobacco as those terms are defined or used in
4 [insert relevant sections if applicable].

5 COMMENT ON AMENDMENT

6 The Act vests the authority to administer its
7 provisions in the appropriate person or agency within
8 the state. In addition to the suggestions in the
9 comment to Section 201 in the 1970 Act, the
10 "appropriate" person or agency should have expertise in
11 law enforcement, pharmacology, and chemistry. In
12 subsection (a) "enumerated" is replaced with "listed"
13 to make consistent the use of terminology throughout
14 the Act. "Listed" is used to refer to the controlled
15 substances listed in this Act, while "included" is used
16 to refer to substances controlled under authority of
17 this Act but not necessarily "listed" in this Act.
18 Subsection (a) is revised to allow federal findings
19 with respect to the substance to be the evidence of
20 consideration of the relevant enumerated factors in
21 subsection (a). Subsection (d) is presented in the
22 alternative. Alternative A maintains the current
23 process of action without resorting to normal
24 administrative procedure. The subsection is revised to
25 provide that an order is required to be published to
26 similarly control a substance without objection and to
27 clarify that the decision of the administering agency
is final with respect to administrative action but is
subject to judicial review as provided by Section 507.
Alternative B requires compliance with regular state
administrative procedures. The new subsection (e) is
intended to allow emergency scheduling and is based on
similar temporary scheduling authority in the federal
Act, added in 1984 and contained in 21 U.S.C. 811(h).
However, subsection (e) is limited to emergency
scheduling of controlled substance analogues. The
reference to the scheduling on a temporary basis under
federal law is intended to allow use of scheduling
under the equivalent federal provision, 21 U.S.C.
811(h) as a factor in lieu of the three referenced
factors in subsection (a). The initiation of a regular
rulemaking proceeding is a condition precedent to the
issuance of an emergency order. States may wish to
consider whether to allow a hearing under subsection
(e) upon the request of an interested party, similar to
that provided by subsection (d), Alternative A.

1 SECTION 202. {NOMENCLATURE.} The controlled
2 substances listed or to be ~~listed~~ included in the
3 schedules in ~~sections~~ Sections 204, 206, 208, 210, and
4 212 are included by whatever official, common, usual,
5 chemical, or trade name designated.

6 COMMENT ON AMENDMENT

7 "Included" is used to refer to substances
8 controlled under authority of this Act but not
9 necessarily "listed" in this Act.

10 SECTION 203. {SCHEDULE I TESTS.}

11 (a) The [appropriate person or agency] shall
12 place a substance in Schedule I ~~if-he-{it}-finds~~ upon
13 finding that the substance:

14 ALTERNATIVE A

- 15 (1) has high potential for abuse; and
16 (2) has no currently accepted medical use in
17 treatment in the United States ~~or;~~ and
18 (3) lacks accepted safety for use in treatment
19 under medical supervision.

20 ALTERNATIVE B

- 21 (1) has ~~high~~ potential for abuse; and
22 (2) has ~~no~~ not been accepted ~~medical-use-in~~
23 ~~treatment-in-the-United-States-er~~ by the federal Food
24 and Drug Administration as being safe and effective;
25 and
26 (3) lacks accepted safety for use ~~in-treatment~~
27 under medical supervision.

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1 findings required by subsection (a), if it is placed by
2 a federal agency on the corresponding federal schedule
3 pursuant to an international agreement. See 21 U.S.C.
4 811(d). As enacted in 1970 the federal Act contained
5 such a provision, 21 U.S.C. 811(d)(1), which was
6 expended in 1978 with respect to application of the
7 Convention on Psychotropic Substances, 21 U.S.C.
8 811(d)(2).

9
10 SECTION 204. {SCHEDULE I.}

11 (a) The controlled substances listed in this
12 section are included in Schedule I.

13 (b) Any Unless specifically excepted or unless
14 included in another schedule, any of the following
15 opiates, including their isomers, esters, ethers,
16 salts, and salts of isomers, esters, and ethers, ~~unless~~
17 ~~specifically-excepted,~~ whenever the existence of ~~these~~
18 those isomers, esters, ethers, and salts is possible
19 within the specific chemical designation:

20 (1) Acetylmethadol;

21 (2) Allylprodine;

22 (3) Alphacetylmethadol;

23 (4) Alphameprodine;

24 (5) Alphamethadol;

25 (6) Alpha-methylfentanyl (N-[1-(alpha-methyl-
26 beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-
27 methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(7) Benzethidine;

{7} (8) Betacetylmethadol;

{8} (9) Betameprodine;

{9} (10) Betamethadol;

1 ~~{10}~~ (11) Betaprodine;
2 ~~{11}~~ (12) Clonitazene;
3 ~~{12}~~ (13) Dextromoramide;
4 ~~{13}~~--Dextro~~r~~orph~~an~~;
5 (14) Diampromide;
6 (15) Diethylthiambutene;
7 (16) Difenoxin;
8 ~~{16}~~ (17) Dimenoxadol;
9 ~~{17}~~ (18) Dimepheptanol;
10 ~~{18}~~ (19) Dimethylthiambutene;
11 ~~{19}~~ (20) Dioxaphetyl butyrate;
12 ~~{20}~~ (21) Dipipanone;
13 ~~{21}~~ (22) Ethylmethylthiambutene;
14 ~~{22}~~ (23) Etonitazene;
15 ~~{23}~~ (24) Etoxeridine;
16 ~~{24}~~ (25) Furethidine;
17 ~~{25}~~ (26) Hydroxypethidine;
18 ~~{26}~~ (27) Ketobemidone;
19 ~~{27}~~ (28) Levomoramide;
20 ~~{28}~~ (29) Levophenacylmorph~~an~~;
21 (30) 3-Methylfentanyl (N-[3-methyl-1-(2-
22 phenylethyl)-4-piperidyl]-N-phenylpropanamide);
23 ~~{29}~~ (31) Morpheridine;
24 (32) MPPP (1-methyl-4-phenyl-4-
25 propionoxypiperidine);
26 ~~{30}~~ (33) Noracymethadol;
27 ~~{31}~~ (34) Norlevorphanol;

1 ~~(32)~~ (35) Normethadone;
2 ~~(33)~~ (36) Norpipanone;
3 ~~(37)~~ PEPAP(1-(-2-phenethyl)-4-phenyl-4-
4 acetoxypiperidine);
5 ~~(34)~~ (38) Phenadoxone;
6 ~~(35)~~ (39) Phenampromide;
7 ~~(36)~~ (40) Phenomorphan;
8 ~~(37)~~ (41) Phenoperidine;
9 ~~(38)~~ (42) Piritramide;
10 ~~(39)~~ (43) Proheptazine;
11 ~~(40)~~ (44) Properidine;
12 (45) Propiram;
13 ~~(41)~~ (46) Racemoramide;
14 (47) Tilidine;
15 ~~(42)~~ (48) Trimeperidine.

16 (c) Any Unless specifically excepted or unless
17 included in another schedule, any of the following
18 opium derivatives, including their salts, isomers, and
19 salts of isomers, ~~unless specifically excepted,~~
20 whenever the existence of ~~these~~ those salts, isomers,
21 and salts of isomers is possible within the specific
22 chemical designation:

23 (1) Acetorphine;
24 (2) Acetyldihydrocodeine;
25 (3) Benzylmorphine;
26 (4) Codeine methylbromide;
27 (5) Codeine-N-Oxide;

- 1 (6) Cyprenorphine;
2 (7) Desomorphine;
3 (8) Dihydromorphine;
4 (9) Drotabanol;
5 (10) Etorphine, except hydrochloride salt;
6 ~~(11)~~ (11) Heroin;
7 ~~(12)~~ (12) Hydromorphinol;
8 ~~(13)~~ (13) Methyldesorphine;
9 ~~(14)~~ (14) Methyldihydromorphine;
10 ~~(15)~~ (15) Morphine methylbromide;
11 ~~(16)~~ (16) Morphine methylsulfonate;
12 ~~(17)~~ (17) Morphine-N-Oxide;
13 ~~(18)~~ (18) Myrophine;
14 ~~(19)~~ (19) Nicocodeine;
15 ~~(20)~~ (20) Nicomorphine;
16 ~~(21)~~ (21) Normorphine;
17 ~~(22)~~ (22) Phoclodine;
18 ~~(23)~~ (23) Thebacon.

19 (d) Any Unless specifically excepted or unless
20 included in another schedule, any material, compound,
21 mixture, or preparation ~~which contains~~ containing any
22 quantity of the following hallucinogenic substances,
23 including their salts, isomers, and salts of isomers,
24 ~~unless specifically excepted~~, whenever the existence of
25 ~~these~~ those salts, isomers, and salts of isomers is
26 possible within the specific chemical designation.
27

- 1 (1) 3,4-methylenedioxy-amphetamine 4-bromo-
2 2,5-dimethoxyamphetamine (Some trade or other names:
3 4-bromo-2,5-dimethoxy-a-methylphenethylamine;
4 4-bromo-2,5-DMA.);
- 5 (2) 2,5-dimethoxyamphetamine (Some trade or
6 other names: 2,5-dimethoxy-a-methylphenethylamine;
7 2,5-DMA.);
- 8 (3) 4-methoxyamphetamine (Some trade or other
9 names: 4-methoxy-a-methylphenethylamine;
10 paramethoxyamphetamine, PMA.);
- 11 (4) 5-methoxy-3,4-methylenedioxy amphetamine;
12 (5) 4-methyl-2,5-dimethoxy-amphetamine (Some
13 trade and other names: 4-methyl-2,5-dimethoxy-a-
14 methylphenethylamine; "DOM;" and "STP.");
- 15 (6) 3,4-methylenedioxy amphetamine;
16 (7) 3,4-methylenedioxymethamphetamine (MDMA);
17 (8) 3,4,5-trimethoxy amphetamine;
18 (9) Bufotenine (Some trade and other
19 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
20 dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin;
21 5-hydroxy-N,N-dimethyltryptamine; mappine.);
- 22 (10) Diethyltryptamine (Some trade or
23 other names: N,N-Diethyltryptamine; DET.);
- 24 (11) Dimethyltryptamine (Some trade or
25 other names: DMT.);
- 26 (12) 4-methyl-2,5-dimethoxyamphetamine;
27

1 ~~{8}~~ (12) Ibogaine (Some trade and other
2 names: (7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-
3 methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine
4 [5,4-b] indole; Tabernanthe iboga.);
5 ~~{9}~~ (13) Lysergic acid diethylamide;
6 ~~{10}~~ (14) Marihuana;
7 ~~{11}~~ (15) Mescaline;
8 (16) Parahexyl-7374 (Some trade or other
9 names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-
10 trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.);
11 ~~{12}~~ (17) Peyote (Meaning all parts of the
12 plant presently classified botanically as Lophophora
13 williamsii Lemaire, whether growing or not, the seeds
14 thereof, any extract from any part of the plant, and
15 every compound, manufacture, salts, derivative,
16 mixture, or preparation of the plant, its seeds or
17 extracts.);
18 ~~{13}~~ (18) N-ethyl-3-piperidyl benzilate;
19 ~~{14}~~ (19) N-methyl-3-piperidyl benzilate;
20 ~~{15}~~ (20) Psilocybin;
21 ~~{16}~~ (21) Psilocyn;
22 ~~{17}~~ (22) Tetrahydrocannabinols;
23 (23) Ethylamine analog of phencyclidine (Some
24 trade or other names: N-ethyl-1-phenylcyclohexylamine,
25 (1-phenylcyclohexyl)ethylamine, N-(1-
26 phenylcyclohexyl)ethylamine, cyclohexamine, PCE.);
27

1 (24) Pyrrolidine analog of phencyclidine
2 (Some trade or other names: 1-(1-phenylcyclohexyl)-
3 pyrrolidine, PCPy, PHP.);

4 (25) Thiophene analog of phencyclidine (Some
5 trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-
6 piperidine, 2-thienylanalog of phencyclidine, TCP,
7 TCP.).

8 (e) Unless specifically excepted or unless
9 included in another schedule, any material, compound,
10 mixture, or preparation containing any quantity of the
11 following substances having a depressant effect on the
12 central nervous system, including their salts, isomers,
13 and salts of isomers whenever the existence of those
14 salts, isomers, and salts of isomers is possible within
15 the specific chemical designation:

16 (1) Mecloqualone;

17 (2) Methaqualone.

18 (f) Unless specifically excepted or unless
19 included in another schedule any material, compound,
20 mixture, or preparation containing any quantity of the
21 following substances having a stimulant effect on the
22 central nervous system, including their salts, isomers,
23 and salts of isomers:

24 (1) Fenethylline;

25 (2) N-ethylamphetamine.

26 COMMENT ON AMENDMENT

27 Schedule I is revised to reflect the substances

1 controlled under Schedule I of the federal Act, as
2 published in 21 CFR 1308.11 (April 1, 1986), and
updated through the February 27, 1987, issue of the
Federal Register.

4 SECTION 205. {SCHEDULE II TESTS.}

5 (a) The [appropriate person or agency] shall
6 place a substance in Schedule II ~~if-he-{it}-finds~~ upon
7 finding that:

8 ALTERNATIVE A

9 (1) the substance has high potential for
10 abuse;

11 (2) the substance has currently accepted
12 medical use in treatment in the United States, or
13 currently accepted medical use with severe
14 restrictions; and

15 (3) the abuse of the substance may lead to
16 severe ~~psychic~~ psychological or physical dependence.

17 ALTERNATIVE B

18 (1) the substance has ~~high~~ potential for
19 abuse;

20 (2) the substance has ~~currently not been~~
21 ~~accepted medical-use-in-treatment-in-the-United-States~~
22 by the federal Food and Drug Administration as being
23 safe and effective, or ~~currently~~ has been accepted
24 medical by the federal Food and Drug Administration for
25 use with severe restrictions; and

26 (3) the abuse of the substance may lead to
27 severe ~~psychic~~ psychological or physical dependence.

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(2) ~~the substance has currently accepted~~
~~medical use in treatment in the United States, or~~
~~currently accepted medical use with severe~~
~~restrictions, and~~

(b) The [appropriate person or agency] may place a substance in Schedule II without being required to make the findings required by subsection (a) if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

The requirements of subsection (a) are presented as three alternatives. Alternative A retains the existing requirements. Alternative B revises subsection (a)(2) to provide that the substance either has not been accepted or has been accepted on a restricted basis by the federal Food and Drug Administration. Acceptance is a prerequisite for being considered as accepted for medical use. Alternative C deletes the requirement with respect to currently accepted medical use. The term "psychic" is replaced by the term "psychological" to conform to the finding required under the federal Act, 21 U.S.C. 812(b)(2)(C). Subsection (b) is added to allow placement of a substance on the schedule without the necessity of the findings required by subsection (a), if it is placed by a federal agency on the corresponding federal schedule pursuant to an international agreement. See 21 U.S.C. 811(d). As enacted in 1970 the federal Act contained such a provision, 21 U.S.C. 811(d)(1), which was

1 expanded in 1978 with respect to application to the
2 Convention on Psychotropic Substances, 21 U.S.C.
3 811(d) (2).

4 SECTION 206. {SCHEDULE II.}

5 (a) The controlled substances listed in this
6 section are included in Schedule II.

7 (b) Any Unless specifically excepted or unless
8 included in another schedule, any of the following
9 substances, except those narcotic drugs listed in other
10 schedules, whether produced directly or indirectly by
11 extraction from substances of vegetable origin, or
12 independently by means of chemical synthesis, or by a
13 combination of extraction and chemical synthesis:

14 (1) Opium and opiate, and any salt, compound,
15 derivative, or preparation of opium or opiate,
16 excluding apomorphine, dextrorphan, nalbuphine,
17 butorphanol, nalmefene, naloxone, and naltrexone, but
18 including:

19 (i) Raw opium;

20 (ii) Opium extracts;

21 (iii) Opium fluid;

22 (iv) Powdered opium;

23 (v) Granulated opium;

24 (vi) Tincture of opium;

25 (vii) Codeine;

26 (viii) Ethylmorphine;

27 (ix) Etorphine hydrochloride;

- 1 (x) Hydrocodone;
2 (xi) Hydromorphone;
3 (xii) Metopon;
4 (xiii) Morphine;
5 (xiv) Oxycodone;
6 (xv) Oxymorphone;
7 (xvi) Thebaine.

8 (2) Any salt, compound, ~~isomer~~, derivative,
9 or preparation thereof which is chemically equivalent
10 or identical with any of the substances referred to in
11 paragraph (1), but not including the isoquinoline
12 alkaloids of opium.

13 (3) Opium poppy and poppy straw.

14 (4) Coca leaves and any salt, compound,
15 derivative, or preparation of coca leaves, including
16 cocaine and ecgonine and their salts, isomers,
17 derivatives, and salts of isomers and derivatives, and
18 any salt, compound, derivative, or preparation thereof
19 which is chemically equivalent or identical with any of
20 these substances, but not including decocainized coca
21 leaves or extractions of coca leaves which do not
22 contain cocaine or ecgonine.

23 (5) Concentrate of poppy straw (the crude
24 extract of poppy straw in either liquid, solid, or
25 powder form which contains the phenanthrene alkaloids
26 of the opium poppy).

27

(c) Any Unless specifically excepted or unless included in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of ~~these~~ those isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- ~~(2)~~ (3) Anileridine;
- ~~(3)~~ (4) Bezitramide;
- ~~(4)~~ (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Dihydrocodeine;
- ~~(5)~~ (7) Diphenoxylate;
- ~~(6)~~ (8) Fentanyl;
- ~~(7)~~ (9) Isomethadone;
- ~~(8)~~ (10) Levomethorphan;
- ~~(9)~~ (11) Levorphanol;
- ~~(10)~~ (12) Metazocine;
- ~~(11)~~ (13) Methadone;
- ~~(12)~~ (14) Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- ~~(13)~~ (15) Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-~~propane~~ diphenylpropane-carboxylic acid;
- ~~(14)~~ (16) Pethidine (meperidine);

1 ~~(15)~~ (17) Pethidine - Intermediate-A,
2 4-cyano-1-methyl-4-phenylpiperidine;

3 ~~(16)~~ (18) Pethidine - Intermediate-B,
4 ethyl-4-phenylpiperidine-4-carboxylate;

5 ~~(17)~~ (19) Pethidine - Intermediate-C,
6 1-methyl-4-phenylpiperidine-4-carboxylic acid;

7 ~~(18)~~ (20) Phenazocine;

8 ~~(19)~~ (21) Piminodine;

9 ~~(20)~~ (22) Racemethorphan;

10 ~~(21)~~ (23) Racemorphan;

11 (24) Sufentanil.

12 (d) Unless specifically excepted or unless
13 included in another schedule, any material, compound,
14 mixture, or preparation containing any quantity of the
15 following substances having a stimulant effect on the
16 central nervous system:

17 (1) Amphetamine, its salts, isomers, and
18 salts of its isomers;

19 (2) Methamphetamine, its salts, isomers, and
20 salts of its isomers;

21 (3) Phenmetrazine and its salts;

22 (4) Methylphenidate.

23 (e) Unless specifically excepted or unless
24 included in another schedule, any material, compound,
25 mixture, or preparation containing any quantity of the
26 following substances having a depressant effect on the
27 central nervous system, including their salts, isomers,

1 and salts of isomers whenever the existence of those
2 salts, isomers, and salts of isomers is possible within
3 the specific chemical designation:

4 (1) Amobarbital;

5 (2) Pentobarbital;

6 (3) Phencyclidine;

7 (4) Secobarbital.

8 (f) Dronabinol (synthetic) in sesame oil and
9 encapsulated in a soft gelatin capsule in a federal
10 Food and Drug Administration approved drug product
11 [some other names for dronabinol: (6aR-trans)-
12 6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-
13 dibenzo [b,d]pyran-1-ol, or (-)-delta-9-(trans)-
14 tetrahydrocannabinol].

15 (g) Unless specifically excepted or unless
16 included in another schedule, any material, compound,
17 mixture, or preparation containing any quantity of the
18 following substances:

19 (1) Immediate precursor to amphetamine and
20 methamphetamine: phenylacetone (Some trade or other
21 names: phenyl-w-propanone; P2P; benzyl methyl ketone;
22 methyl benzyl ketone.);

23 (2) Immediate precursors to phencyclidine:

24 (i) 1-phenylcyclohexylamine;

25 (ii) 1-piperidinocyclohexanecarbonitrile

26 (PCC).

1 COMMENT ON AMENDMENT

2 Schedule II is revised to reflect the substances
3 controlled under Schedule II of the federal Act, as
4 published in 21 CFR 1308.12 (April 1, 1986), and
5 updated through the February 27, 1987, issue of the
6 Federal Register.

7 SECTION 207. {SCHEDULE III TESTS.}

8 (a) The [appropriate person or agency] shall
9 place a substance in Schedule III ~~if-he-{it}-finds~~ upon
10 finding that:

11 ALTERNATIVE A

12 (1) the substance has a potential for abuse
13 less than the substances ~~listed~~ included in Schedules I
14 and II;

15 (2) the substance has currently accepted
16 medical use in treatment in the United States; and

17 (3) abuse of the substance may lead to
18 moderate or low physical dependence or high
19 psychological dependence.

20 ALTERNATIVE B AND C

21 (1) the substance has a potential for abuse
22 less than the substances ~~listed~~ included in Schedules I
23 and II; and

24 (2) ~~the-substance-has-currently-accepted~~
25 ~~medical-use-in-treatment-in-the-United-States,-and~~

26 {3} abuse of the substance may lead to
27 moderate or low physical dependence or high
psychological dependence.

(b) The [appropriate person or agency] may place a substance in Schedule III without being required to make the findings required by subsection (a) if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

COMMENT ON AMENDMENT

The requirements of subsection (a) are presented as two alternatives. Alternative A retains the existing requirements. Alternative B and C deletes the requirement with respect to currently accepted medical use. In subsection (a) "included" is used to refer to substances controlled on adoption of the Act (those substances "listed" in Section 204, 206, 208, 210, and 212) and to substances controlled under Section 601 and administrative action. Subsection (b) is added to allow placement of a substance on the schedule without the necessity of the findings required by subsection (a), if it is placed by a federal agency on the corresponding federal schedule pursuant to an international agreement. See 21 U.S.C. 811(d). As enacted in 1970 the federal Act contained such a provision, 21 U.S.C. 811(d)(1), which was expanded in 1978 with respect to application to the Convention on Psychotropic Substances, 21 U.S.C. 811(d)(2).

SECTION 208. †SCHEDULE III.†

(a) The controlled substances listed in this section are included in Schedule III.

(b) Any Unless specifically excepted or unless included in another schedule, any material, compound, mixture, or preparation ~~which contains~~ containing any quantity of the following substances having ~~a potential~~ for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers,

1 and salts of isomers whenever the existence of those
2 salts, isomers, and salts of isomers is possible within
3 the specific chemical designation:

4 (1) ~~Amphetamine,--its-salts,--optical-isomers,~~
5 ~~and-salts-of-the-optical-isomers~~ Any compound,
6 mixutre, or preparation in dosage unit form containing
7 any stimulant substance included in Schedule II and
8 which was listed as an excepted compound on August 25,
9 1971, pursuant to the federal Controlled Substances
10 Act, and any other drug of the quantative composition
11 shown in that list for those drugs or which is the same
12 except for containing a lesser quantity of controlled
13 substances;

14 (2) ~~Phenmetrazine-and-its-salts~~
15 Benzphetamine.

16 (3) ~~Any-substance-which-contains-any-quantity~~
17 ~~of-methamphetamine,--including-its-salts,--isomers,--and~~
18 ~~salts-of-isomers~~ Chlorphentermine;

19 (4) ~~Methylphenidate~~ Clortermine;

20 (5) Phendimetrazine.

21 (c) ~~Unless listed~~ specifically excepted or
22 unless included in another schedule, any material,
23 compound, mixture, or preparation ~~which-contains~~
24 containing any quantity of the following substances
25 having ~~a-potential-for-abuse-associated-with a~~
26 depressant effect on the central nervous system:

27

(1) Any compound, mixture, or preparation containing any of the following drugs or their salts and one or more other active medicinal ingredients not included in any schedule:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(2) Any of the following drugs, or their salts, in suppository dosage form, approved by the federal Food and Drug Administration for marketing only as a suppository:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

(3) Any substance which-contains containing any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid,-except-these substances-which-are-specifically-listed-in-other Schedules;

~~(2)~~ (4) Chlorhexadol;

~~(3)~~ (5) Glutethimide;

~~(4)~~ (6) Lysergic acid;

~~(5)~~ (7) Lysergic acid amide;

~~(6)~~ (8) Methyprylon;

~~(7)~~--Phencyclidine;

~~(8)~~ (9) Sulfondiethylmethane;

~~(9)~~ (10) Sulfonethylmethane;

1 ~~(10)~~ (11) Sulfonmethane;

2 (12) Tiletamine and zolazepam or any of their
3 salts (Some trade or other names for a tiletamine-
4 zolazepam combination product: Telazol. Some trade or
5 other names for tiletamine: 2-(ethylamino)-2-(2-
6 thienyl)-cyclohexanone. Some trade or other names for
7 zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-
8 trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one.
9 flupyrzapon.).

10 (d) Nalorphine.

11 (e) Any Unless specifically excepted or unless
12 included in another schedule, any material, compound,
13 mixture, or preparation containing ~~limited-quantities~~
14 of any of the following narcotic durgs, or any their
15 salts thereof calculated as the free anhydrous base or
16 alkaloid, in limited quantities as set forth below:

17 (1) Not more than 1.8 grams of codeine~~-or~~
18 ~~any-of-its-salts~~, per 100 milliliters or not more than
19 90 milligrams per dosage unit, with an equal or greater
20 quantity of an isoquinoline alkaloid of opium;

21 (2) Not more than 1.8 grams of codeine~~-or~~
22 ~~any-of-its-salts~~, per 100 milliliters or not more than
23 90 milligrams per dosage unit, with one or more active,
24 nonnarcotic ingredients in recognized therapeutic
25 amounts;

26 (3) Not more than 300 milligrams of
27 dihydrocodeinone~~-or-any-of-its-salts~~, per 100

1 milliliters or not more than 15 milligrams per dosage
2 unit, with a fourfold or greater quantity of an
3 isoquinoline alkaloid of opium;

4 (4) Not more than 300 milligrams of
5 dihydrocodeinone~~7-or-any-of-its-salts7~~, per 100
6 milliliters or not more than 15 milligrams per dosage
7 unit, with one or more active, nonnarcotic ingredients
8 in recognized therapeutic amounts;

9 (5) Not more than 1.8 grams of
10 dihydrocodeine~~7-or-any-of-its-salts7~~, per 100
11 milliliters or not more than 90 milligrams per dosage
12 unit, with one or more active, nonnarcotic ingredients
13 in recognized therapeutic amounts;

14 (6) Not more than 300 milligrams of
15 ethylmorphine~~7-or-any-of-its-salts7~~, per 100 milliliters
16 or not more than 15 milligrams per dosage unit, with
17 one or more active, nonnarcotic ingredients in
18 recognized therapeutic amounts;

19 (7) Not more than 500 milligrams of opium per
20 100 milliliters or per 100 grams, or not more than 25
21 milligrams per dosage unit, with one or more active,
22 nonnarcotic ingredients in recognized therapeutic
23 amounts;

24 (8) Not more than 50 milligrams of morphine~~7~~
25 ~~or-any-of-its-salts7~~, per 100 milliliters or per 100
26 grams with one or more active, nonnarcotic ingredients
27 in recognized therapeutic amounts.

1 (f) The [appropriate person or agency] may
2 except by rule any compound, mixture, or preparation
3 containing any stimulant or depressant substance listed
4 in subsections (b) and (c) from the application of all
5 or any part of this [Act] if the compound, mixture, or
6 preparation contains one or more active medicinal
7 ingredients not having a stimulant or depressant effect
8 on the central nervous system, and if the admixtures
9 are ~~included-therein~~ in combinations, quantity,
10 proportion, or concentration that vitiate the potential
11 for abuse of the substances ~~which-have~~ having a
12 stimulant or depressant effect on the central nervous
13 system.

14 COMMENT ON AMENDMENT

15 Schedule III is revised to reflect the substances
16 controlled under Schedule III of the federal Act, as
17 published in 21 CFR 1308.13 (April 1, 1986) and updated
18 through the February 27, 1987, issue of the Federal
19 Register. The introductory language of subsection (b)
20 is revised to conform to the language contained in 21
21 CFR 1308.13(b). As used in subsection (b), "isomers"
22 means optical, positional, or geometric isomers, as
23 referenced in the federal Schedule III and as defined
24 in Section 101(p). In subsection (c) "included" is
25 used to refer to substances controlled on adoption of
26 the Act (those substances "listed" in Sections 204,
27 206, 208, 210, and 212) and to substances controlled
under Section 601 and administrative action.
Subsection (c)(1) may be ambiguous due to the
possibility of various interpretations due to the "...
or ... and ..." language, e.g., does the prohibition
apply to any preparation containing any drugs, any
drugs and medicinal ingredients, or any salts and
medicinal ingredients. The language with respect to
salts in paragraphs (1), (2), (3), (4), (5), (6), and
(8) of subsection (e) is deleted because it duplicates
the introductory language of subsection (e).

1 SECTION 209. {SCHEDULE IV TESTS.}

2 (a) The [appropriate person or agency] shall
3 place a substance in Schedule IV ~~if-he-{it}-finds~~ upon
4 finding that:

5 ALTERNATIVE A

6 (1) the substance has a low potential for
7 abuse relative to substances included in Schedule III;

8 (2) the substance has currently accepted
9 medical use in treatment in the United States; and

10 (3) abuse of the substance may lead to limited
11 physical dependence or psychological dependence
12 relative to the substance included in Schedule III.

13 ALTERNATIVE B AND C

14 (1) the substance has a low potential for
15 abuse relative to substances included in Schedule III;
16 and

17 ~~(2) the-substance-has-currently-accepted~~
18 ~~medical-use-in-treatment-in-the-United-States,-and~~

19 ~~{3}~~ abuse of the substance may lead to limited
20 physical dependence or psychological dependence
21 relative to the substances included in Schedule III.

22 (b) The [appropriate person or agency] may place
23 a substance in Schedule IV without being required to
24 make the findings required by subsection (a) if the
25 substance is controlled under Schedule IV of the
26 federal Controlled Substances Act by a federal agency

27

1 as the result of an international treaty, convention,
2 or protocol.

3 COMMENT ON AMENDMENT

4 The requirements of subsection (a) are presented
5 as two alternatives. Alternative A retains the
6 existing requirements. Alternative B and C deletes the
7 requirement with respect to currently accepted medical
8 use. In subsection (a) "included" is used to refer to
9 substances controlled on adoption of the Act (those
10 substances "listed" in Sections 204, 206, 208, 210, and
11 212) and to substances controlled under Section 601 and
12 administrative action. Subsection (b) is added to
13 allow placement of a substance on the schedule without
14 the necessity of the findings required by subsection
15 (a), if it is placed by a federal agency on the
16 corresponding federal schedule pursuant to an
17 international agreement. See 21 U.S.C. 811(d). As
18 enacted in 1970, the federal Act contained such a
19 provision, 21 U.S.C. 811(d)(1), which was expanded in
20 1978 with respect to application to the Convention on
21 Psychotropic Substances, 21 U.S.C. 811(d)(2).

14 SECTION 210. {SCHEDULE IV.}

15 (a) The controlled substances listed in this
16 section are included in Schedule IV.

17 (b) Unless specifically excepted or unless
18 included in another schedule, any material, compound,
19 mixture, or preparation containing any of the following
20 narcotic drugs, or their salts calculated as the free
21 anhydrous base or alkaloid, in limited quantities as
22 set forth below:

23 (1) Not more than 1 milligram of difenoxin
24 and not less than 25 micrograms of atropine sulfate per
25 dosage unit;

1 (2) Dextropropoxyphene (alpha-(+)-4-
2 dimethylamino-1,2-diphenyl-3-methyl-2-
3 propionoxybutane).

4 Any (c) Unless specifically excepted or unless
5 included in another schedule, any material, compound,
6 mixture, or preparation ~~which contains~~ containing any
7 quantity of the following substances having ~~a-potential~~
8 ~~for-abuse-associated-with-a-depressant-effect-on-the~~
9 ~~central-nervous-system,~~ including their salts, isomers,
10 and salts of isomers whenever the existence of those
11 salts, isomers, and salts of isomers is possible within
12 the specific chemical designation:

13 (1) Alprazolam;

14 (2) Barbital;

15 (3) Bromazepam;

16 (4) Camazepam;

17 ~~(2)~~ (5) Chloral betaine;

18 ~~(3)~~ (6) Chloral hydrate;

19 (7) Chlordiazepoxide;

20 (8) Clobazam;

21 (9) Clonazepam;

22 (10) Clorazepate;

23 (11) Clotiazepam;

24 (12) Cloxazolam;

25 (13) Delorazepam;

26 (14) Diazepam;

27 (15) Estazolam;

1 ~~{4}~~ (16) Ethchlorvynol;
2 ~~{5}~~ (17) Ethinamate;
3 (18) Ethyl loflazepate;
4 (19) Fludiazepam;
5 (20) Flunitrazepam;
6 (21) Flurazepam;
7 (22) Halazepam;
8 (23) Haloxazolam;
9 (24) Ketazolam;
10 (25) Loprazolam;
11 (26) Lorazepam;
12 (27) Lormetazepam;
13 (28) Mebutamate;
14 (29) Medazepam;
15 (30) Meprobamate;
16 ~~{6}~~ (31) Methohexital;
17 ~~{7}~~--Meprobamate;
18 ~~{8}~~ (32) Methylphenobarbital (mephobarbital);
19 (33) Midazolam;
20 (34) Nimetazepam;
21 (35) Nitrazepam;
22 (36) Nordiazepam;
23 (37) Oxazepam;
24 (38) Oxazolam;
25 ~~{9}~~ (39) Paraldehyde;
26 ~~{10}~~ (40) Petrichloral;
27 ~~{11}~~ (41) Phenobarbital;

1 (42) Pinazepam;

2 (43) Prazepam;

3 (44) Quazepam;

4 (45) Temazepam;

5 (46) Tetrazepam;

6 (47) Triazolam.

7 (d) Any material, compound, mixture, or
8 preparation containing any quantity of the following
9 substance, including its salts, isomers, and salts of
10 isomers, whenever the existence of the salts, isomers,
11 and salts of isomers is possible: fenfluramine.

12 (e) Unless specifically excepted or unless
13 included in another schedule, any material, compound,
14 mixture, or preparation containing any quantity of the
15 following substances having a stimulant effect on the
16 central nervous system, including their salts, isomers,
17 and salts of isomers:

18 (1) Diethylpropion;

19 (2) Mazindol;

20 (3) Pemoline (including organometallic
21 complexes and chelates thereof);

22 (4) Phentermine;

23 (5) Pipradrol;

24 (6) SPA ((-)-1-dimethylamino-1,2-
25 diphenylethane).

26 (f) Unless specifically excepted or unless
27 included in another schedule, any material, compound,

1 mixture, or preparation containing any quantity of the
2 following substance, including its salts: pentazocine.

3 {e} (g) The [appropriate person or agency] may
4 except by rule any compound, mixture, or preparation
5 containing any depressant substance listed in
6 subsection {b} (c) from the application of all or any
7 part of this [Act] if the compound, mixture, or
8 preparation contains one or more active medicinal
9 ingredients not having a depressant effect on the
10 central nervous system, and if the admixtures are
11 ~~included-therein~~ in combinations, quantity, proportion,
12 or concentration that vitiate the potential for abuse
13 of the substances ~~which-have~~ having a depressant effect
14 on the central nervous system.

15 COMMENT ON AMENDMENT

16 Schedule IV is revised to reflect the substances
17 controlled under Schedule IV of the federal Controlled
18 Substances Act, as published in 21 CFR 1308.14 (April
19 1, 1986) and updated through the February 27, 1987,
20 issue of the Federal Register. As used in subsection
(d), "isomers" means optical, positional, or geometric
isomers, as referenced in the federal Schedule IV and
as defined in Section 101(p).

21 SECTION 211. {SCHEDULE V TESTS.}

22 (a) The [appropriate person or agency] shall
23 place a substance in Schedule V ~~if-he-{it}-finds~~ upon
24 finding that:

25 ALTERNATIVE A

26 (1) the substance has a low potential for
27 abuse relative to substances included in Schedule III;

1 (2) the substance has currently accepted
2 medical use in treatment in the United States; and

3 (3) abuse of the substance may lead to limited
4 physical dependence or psychological dependence
5 relative to the substances included in Schedule III.

6 ALTERNATIVE B AND C

7 (1) the substance has low potential for abuse
8 relative to the controlled substances ~~listed~~ included
9 in Schedule III; and

10 ~~(2) the substance has currently accepted~~
11 ~~medical use in treatment in the United States; and~~

12 ~~(3)~~ the substance has limited physical
13 dependence liability relative to the controlled
14 substances ~~listed~~ included in Schedule IV.

15 (b) The [appropriate person or agency] may place
16 a substance in Schedule V without being required to
17 make the findings required by subsection (a) if the
18 substance is controlled under Schedule V of the federal
19 Controlled Substances Act by a federal agency as the
20 result of an international treaty, convention, or
21 protocol.

22 COMMENT ON AMENDMENT

23 The requirements of subsection (a) are presented
24 as two alternatives. Alternative A retains the
25 existing requirements. Alternative B and C deletes the
26 requirement with respect to currently accepted medical
27 use. In subsection (a) "included" is used to refer to
substances controlled on adoption of the Act (those
substances "listed" in Sections 204, 206, 208, 210, and
212) and to substances controlled under Section 601 and
administrative action. Subsection (b) is added to

1 allow placement of a substance on the schedule without
2 the necessity of the findings required by subsection
3 (a), if it is placed by a federal agency on the
4 corresponding federal schedule pursuant to an
5 international agreement. See 21 U.S.C. 811(d). As
6 enacted in 1970 the federal Act contained such a
7 provision, 21 U.S.C. 811(d)(1), which was expanded in
8 1978 with respect to application to the Convention on
9 Psychotropic Substances, 21 U.S.C. 811(d)(2).

10 SECTION 212. {SCHEDULE V.}

11 (a) The controlled substances listed in this
12 section are included in Schedule V.

13 (b) Unless specifically excepted or unless
14 included in another schedule, any material, compound,
15 mixture, or preparation containing any of the following
16 narcotic drug and its salts: buprenorphine.

17 (c) Any compound, mixture, or preparation
18 containing ~~limited-quantities-of~~ any of the following
19 narcotic drugs, or their salts calculated as the free
20 anhydrous base or alkaloid, in limited quantities as
21 set forth below, which also contains one or more
22 nonnarcotic active medicinal ingredients in sufficient
23 proportion to confer upon the compound, mixture, or
24 preparation, valuable medicinal qualities other than
25 those possessed by the narcotic drug alone:

26 (1) Not more than 200 milligrams of codeine,
27 ~~or-any-of-its-salts,~~ per 100 milliliters or per 100
grams;

(2) Not more than 100 milligrams of
dihydrocodeine,~~or-any-of-its-salts,~~ per 100

1 milliliters or per 100 grams;

2 (3) Not more than 100 milligrams of
3 ethylmorphine, ~~or any of its salts,~~ per 100 milliliters
4 or per 100 grams;

5 (4) Not more than 2.5 milligrams of
6 diphenoxylate and not less than 25 micrograms of
7 atropine sulfate per dosage unit;

8 (5) Not more than 100 milligrams of opium per
9 100 milliliters or per 100 grams;

10 (6) Not more than 0.5 milligram of difenoxin and
11 not less than 25 micrograms of atropine sulfate per
12 dosage unit.

13 COMMENT ON AMENDMENT

14 Schedule V is revised to reflect the substances
15 controlled under Schedule V of the federal Controlled
16 Substances Act, as published in 21 CFR 1308.15 (April
17 1, 1986) and updated through the February 27, 1987,
18 issue of the Federal Register. The language with
respect to salts in paragraphs (1)-(3) of subsection
(c) is deleted because it duplicates the added
introductory language of subsection (c).

19 SECTION 213. ~~{REUBLISHING~~ PUBLISHING OF
20 SCHEDULES.} The [appropriate person or agency] shall
21 ~~revise and republish the~~ publish updated schedules
22 ~~semiannually for 2 years from the effective date of~~
23 ~~this Act, and thereafter~~ annually. Failure to publish
24 updated schedules is not a defense to a criminal
25 prosecution under this [Act].

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COMMENT ON AMENDMENT

The language concerning semiannual publication of revised schedules is deleted in that the semiannual requirement was for the two years after initial adoption of the Act. For the federal Act the two-year period began one year after October 27, 1970.

ARTICLE III

{REGULATION OF MANUFACTURE, DISTRIBUTION, AND
DISPENSING OF CONTROLLED SUBSTANCES}

SECTION 301. {RULES.} The [appropriate person or agency] may ~~promulgate~~ adopt rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this State.

COMMENT ON AMENDMENT

The term "promulgate" means to publish or make known officially, e.g., a decree. The term "adopt" is used in the Uniform Law Commissioners' Model State Administrative Procedure Act.

SECTION 302. {REGISTRATION REQUIREMENTS.}

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this State, ~~must~~ shall obtain annually a registration issued by the [appropriate person or agency] in accordance with ~~his-{its}~~ rules adopted by the [appropriate person or agency].

1 (b) ~~Persons~~ A person registered by the
2 [appropriate person or agency] under this [Act] to
3 manufacture, distribute, dispense, or conduct research
4 with controlled substances may possess, manufacture,
5 distribute, dispense, or conduct research with those
6 substances to the extent authorized by ~~their~~ the
7 registration and in conformity with ~~the-other~~
8 ~~provisions-of~~ this Article.

9 (c) The following persons need not register and
10 may lawfully possess controlled substances under this
11 [Act]:

12 (1) An agent or employee of any registered
13 manufacturer, distributor, or dispenser of any
14 controlled substance if ~~he~~ the agent or employee is
15 acting in the usual course of ~~his~~ business or
16 employment;

17 (2) A common or contract carrier or
18 warehouseman, or an employee thereof, whose possession
19 of any controlled substance is in the usual course of
20 business or employment;

21 (3) An ultimate user or a person in
22 possession of any controlled substance pursuant to a
23 lawful order of a practitioner or in lawful possession
24 of a substance included in Schedule V ~~substance~~.

25 (d) The [appropriate person or agency] may waive
26 by rule the requirement for registration of certain
27 manufacturers, distributors, or dispensers ~~if-he-fit~~

1 ~~finds upon finding~~ it consistent with the public health
2 and safety.

3 (e) A separate registration is required at each
4 principal place of business or professional practice
5 where the applicant manufactures, distributes, or
6 dispenses controlled substances.

7 (f) The [appropriate person or agency] may
8 inspect the establishment of a registrant or applicant
9 for registration in accordance with rules adopted by
10 the [appropriate person or agency's agency] rule.

11 COMMENT ON AMENDMENT

12 Subsection (b) is revised to remove the argument
13 that a registrant needs to comply only with "other"
14 provisions of the article and not with this section.
15 In subsection (c) (3) "included" is used to refer to
16 substances controlled on adoption of the Act (those
substances "listed" in Sections 204, 206, 208, 210, and
212) and to substances controlled under Section 601 and
administrative action.

17 SECTION 303. {REGISTRATION.}

18 (a) The [appropriate person or agency] shall
19 register an applicant to manufacture or distribute
20 controlled substances included in ~~Sections-204, 206, 208, 210, and 212~~
21 ~~204, 206, 208, 210, and 212~~ Schedules I through V unless ~~he-~~it~~~~
22 the [appropriate person or agency] determines that the
23 issuance of that registration would be inconsistent
24 with the public interest. In determining the public
25 interest, the [appropriate person or agency] shall
26 consider the following factors:

1 (1) maintenance of effective controls against
2 diversion of controlled substances into other than
3 legitimate medical, scientific, research, or industrial
4 channels;

5 (2) compliance with applicable ~~State~~ state and
6 local law;

7 (3) promotion of technical advances in the art
8 of manufacturing controlled substances and the
9 development of new substances;

10 (4) any convictions of the applicant under any
11 ~~Federal-and-State~~ laws of another country or federal or
12 state laws relating to any controlled substance;

13 (4) (5) past experience in the manufacture or
14 distribution of controlled substances, and the
15 existence in the applicant's establishment of
16 effective controls against diversion of controlled
17 substances into other than legitimate medical,
18 scientific, research, or industrial channels;

19 (5) (6) furnishing by the applicant of false
20 or fraudulent material in any application filed under
21 this [Act];

22 (6) (7) suspension or revocation of the
23 applicant's ~~Federal~~ federal registration or the
24 applicant's registration of another state to
25 manufacture, distribute, or dispense controlled
26 substances as authorized by ~~Federal~~ federal law; and

27

1 ~~(7)~~ (8) any other factors relevant to and
2 consistent with the public health and safety.

3 (b) Registration under subsection (a) does not
4 entitle a registrant to manufacture ~~and~~ or distribute
5 controlled substances included in Schedule I or II
6 other than those specified in the registration.

7 (c) Practitioners must be registered to dispense
8 any controlled substances or to conduct research with
9 controlled substances included in Schedules II through
10 V if they are authorized to dispense or conduct
11 research under the law of this State. The [appropriate
12 person or agency] need not require separate
13 registration under this Article for practitioners
14 engaging in research with nonnarcotic controlled
15 substances included in Schedules II through V where the
16 registrant is already registered under this Article in
17 another capacity. Practitioners registered under
18 ~~Federal~~ federal law to conduct research with substances
19 included in Schedule I ~~substances~~ may conduct research
20 with substances included in Schedule I ~~substances~~
21 within this State upon furnishing the [appropriate
22 person or agency] evidence of that ~~Federal~~ federal
23 registration.

24 ~~(d) Compliance-by-manufacturers-and-distributors~~
25 ~~with-the-provisions-of-the-Federal-law-respecting~~
26 ~~registration-(excluding-fees)-entitles-them-to-be~~
27 ~~registered-under-this-Act.~~ A manufacturer or

1 distributor registered under the federal Controlled
2 Substances Act [21 U.S.C. 810 et seq.] may submit the
3 application for registration under that Act in
4 satisfaction of any application required for
5 registration as a manufacturer or distributor under
6 this section.

7 COMMENT ON AMENDMENT

8 In subsection (a), "research" was contained in
9 the federal Act as enacted in 1970 and is added to
10 paragraph (1); language on promotion of technical
11 advances, which was contained in the federal Act as
12 enacted in 1970, is added as a factor; paragraph (4) is
13 expanded to include convictions under laws of another
14 country; paragraphs (5) and (6) are renumbered and
15 retained even though not listed as factors in the
16 federal Act; and the renumbered paragraph (6) is
17 expanded to include consideration of suspension or
18 revocation of registration of another state.
19 Subsection (b) is revised to conform to the comparable
20 federal provision, 21 U.S.C. 823(c). In subsections
21 (a), (b), and (c) "included" is used to refer to
22 substances controlled on adoption of the Act (those
23 substances "listed" in Sections 204, 206, 208, 210, and
24 212) and to substances controlled under Section 601 and
25 administrative action. Subsection (d) is revised to
26 clarify that a manufacturer or distributor registered
27 under federal law may be registered under this Act,
upon submitting the information contained in the
application for federal registration. The applicant
would still be subject to the determination under
subsection (a).

21 SECTION 304. ~~{REVOCATION-AND~~ SUSPENSION OR
22 REVOCATION OF REGISTRATION.}

23 (a) A registration under Section 303 to
24 manufacture, distribute, or dispense a controlled
25 substance may be suspended or revoked by the
26 [appropriate person or agency] upon a finding that the
27 registrant:

1 (1) has furnished false or fraudulent material
2 information in any application filed under this [Act];

3 (2) has been convicted of a felony under any
4 ~~State~~ state or ~~Federal~~ federal law relating to any
5 controlled substance; or

6 (3) has had ~~his-Federal~~ the registrant's
7 federal registration suspended or revoked and is no
8 longer authorized by federal law to manufacture,
9 distribute, or dispense controlled substances; or

10 (4) has committed acts that would render
11 registration under Section 303 inconsistent with the
12 public interest as determined under that section.

13 (b) The [appropriate person or agency] may limit
14 revocation or suspension of a registration to the
15 particular controlled substance with respect to which
16 grounds for revocation or suspension exist.

17 (c) If the [appropriate person or agency]
18 suspends or revokes a registration, all controlled
19 substances owned or possessed by the registrant at the
20 time of suspension or the effective date of the
21 revocation order may be placed under seal. No
22 disposition may be made of substances under seal until
23 the time for taking an appeal has elapsed or until all
24 appeals have been concluded unless a court, upon
25 application ~~therefor~~, orders the sale of perishable
26 substances and the deposit of the proceeds of the sale
27 with the court. Upon a revocation order becoming

1 final, all controlled substances may be forfeited to
2 the ~~State~~ state.

3 (d) The [appropriate person or agency] may seize
4 or place under seal any controlled substance owned or
5 possessed by a registrant whose registration has
6 expired or who has ceased to practice or do business in
7 the manner contemplated by the registration. The
8 controlled substance must be held for the benefit of
9 the registrant, or the registrant's successor in
10 interest. The [appropriate person or agency] shall
11 notify a registrant, or the registrant's successor in
12 interest, who has any controlled substance seized or
13 placed under seal of the procedures to be followed to
14 secure the return of the controlled substance and the
15 conditions under which it will be returned. The
16 [appropriate person or agency] may not dispose of any
17 controlled substance seized or placed under seal under
18 this subsection until the expiration of one hundred
19 eighty days after the controlled substance was seized
20 or placed under seal. The costs incurred by the
21 [appropriate person or agency] in seizing, placing
22 under seal, maintaining custody, and disposing of any
23 controlled substance under this subsection may be
24 recovered from the registrant or from any proceeds
25 obtained from the disposition of the controlled
26 substance.

1 (e) The [appropriate person or agency] shall
2 promptly notify the Bureau Drug Enforcement
3 Administration of all orders restricting, suspending,
4 or revoking registration and all forfeitures of
5 controlled substances.

6 COMMENT ON AMENDMENT

7 In subsection (a), paragraph (4) is added to
8 authorize the state administering agency to make a
9 finding to suspend or revoke registration similar to
10 the finding provided by 21 U.S.C. 824(a)(4). The new
11 language in subsection (d) authorizes seizure or
12 placement under seal of controlled substances owned or
13 possessed by a registrant whose registration has
14 expired or who has otherwise ceased to practice or do
15 business. This authorization is based on the similar
16 authorization granted in 1984 to the United States
17 Attorney General under 21 U.S.C. 824(g). The provision
18 on recovery of costs is similar to the provision in
19 Section 505(e)(2), which authorizes recovery of
20 expenses of proceedings. The amendment in subsection
21 (e) with respect to restricting a registration reflects
22 the "limited" revocation or suspension under subsection
23 (b).

24 SECTION 305. {ORDER TO SHOW CAUSE.}

25 (a) Before denying, suspending, or revoking a
26 registration, or refusing a renewal of registration,
27 the [appropriate person or agency] shall serve upon the
applicant or registrant an order to show cause why
registration should not be denied, revoked, or
suspended, or why the renewal should not be refused.
The order to show cause ~~shall~~ must contain a statement
of the basis therefor and ~~shall~~ must call upon the
applicant or registrant to appear before the
[appropriate person or agency] at a time and place not

1 less than 30 days after the date of service of the
2 order, but in the case of a denial or renewal of
3 registration the show cause order ~~shall~~ must be served
4 not later than 30 days before the expiration of the
5 registration. These proceedings ~~shall~~ must be
6 conducted in accordance with [insert appropriate
7 administrative procedures] ~~without-regard-to.~~ These
8 proceedings are independent of, but not in lieu of, any
9 criminal prosecution or other proceeding. Proceedings
10 to refuse renewal of registration ~~shall~~ do not abate
11 the existing registration, which ~~shall-remain~~ remains
12 in effect pending the outcome of the administrative
13 hearing.

14 (b) The [appropriate person or agency] may
15 suspend, without an order to show cause, any
16 registration simultaneously with the institution of
17 proceedings under Section 304, or where renewal of
18 registration is refused, ~~if-he-{it}-finds~~ upon finding
19 that there is an imminent danger to the public health
20 or safety which warrants this action. The suspension
21 ~~shall-continue~~ continues in effect until the conclusion
22 of the proceedings, including judicial review thereof,
23 unless sooner withdrawn by the [appropriate person or
24 agency] or dissolved by a court of competent
25 jurisdiction.

26
27

1 COMMENT ON AMENDMENT

2 Subsection (a) is revised to clarify that
3 proceedings to deny, suspend, or revoke a registration
4 are independent of and in addition to criminal
5 prosecutions or other proceedings. See 21 U.S.C.
6 824(c).

7 SECTION 306. {RECORDS OF REGISTRANTS.} Persons
8 registered to manufacture, distribute, or dispense
9 controlled substances under this [Act] shall keep
10 records and maintain inventories in conformance with
11 the recordkeeping and inventory requirements of
12 Federal federal law and with any additional rules
13 adopted by the [appropriate person or agency] ~~issues~~.

14 SECTION 307. {ORDER FORMS.} Controlled substances
15 included in Schedule I and or II shall ~~may~~ be
16 distributed by a registrant to another registrant only
17 pursuant to an order form. Compliance with the
18 provisions of Federal federal law respecting order
19 forms shall ~~be~~ is deemed compliance with this ~~Section~~
20 section.

21 COMMENT ON AMENDMENT

22 "Included" is used to refer to substances
23 controlled on adoption of the Act (those substances
24 "listed" in Sections 204, 206, 208, 210, and 212) and
25 to substances controlled under Section 601 and
26 administrative action.
27

1 SECTION 308. ~~{~~PRESCRIPTIONS.~~}~~

2 (a) No controlled substance may be dispensed
3 except as provided in this section.

4 **(b)** Except when dispensed directly by a
5 practitioner, other than a pharmacy, to an ultimate
6 user, ~~no~~ a controlled substance included in Schedule II
7 may must not be dispensed without the written
8 prescription of a practitioner.

9 ~~{b}~~ **(c)** In emergency situations, as defined by
10 rule of the [appropriate person or agency], drugs
11 included in Schedule II ~~drugs~~ may be dispensed upon
12 oral prescription of a practitioner, reduced promptly
13 to writing and filed by the pharmacy. Prescriptions
14 ~~shall~~ must be retained in conformity with the
15 requirements of Section 306. ~~No~~ A prescription for a
16 substance included in Schedule II ~~substance-may~~ must
17 not be refilled.

18 ~~{c}~~ **(d)** Except when dispensed directly by a
19 practitioner, other than a pharmacy, to an ultimate
20 user, a controlled substance included in Schedule III
21 or IV, which is a prescription drug as determined under
22 [appropriate ~~State~~ state or ~~Federal~~ federal statute],
23 ~~shall~~ must not be dispensed without a written or oral
24 prescription of a practitioner. The prescription ~~shall~~
25 must not be filled or refilled more than 6 six months
26 after the date thereof or be refilled more than 5 five
27 times, unless renewed by the practitioner.

1 ~~(d)~~ (e) A controlled substance included in
2 Schedule V ~~shall~~ must not be distributed or dispensed
3 other than for a medical purpose.

4 (f) No person may dispense or deliver a
5 controlled substance to or for any individual or animal
6 except when in the regular course of that person's
7 profession and for a legitimate medical purpose. The
8 responsibility for proper dispensing of controlled
9 substances is upon the prescribing practitioner, but a
10 corresponding responsibility rests with a pharmacist
11 who fills a prescription. An order purporting to be a
12 prescription, but which is not issued in the usual
13 course of professional treatment or in legitimate and
14 authorized research, is not a prescription within the
15 meaning of this [Act].

16 (g) No person may dispense a controlled
17 substance for or to an addict or habitual user, or to
18 any individual representing oneself as such, except as
19 permitted by this [Act].

20 (h) An individual may dispense a controlled
21 substance for that individual's personal use only for a
22 legitimate medical purpose.

23 COMMENT ON AMENDMENT

24 "Included" is used to refer to substances
25 controlled on adoption of the Act (those substances
26 "listed" in Sections 204, 206, 208, 210, and 212) and
27 to substances controlled under Section 601 and
 administrative action. Subsections (a), (f), and (g)
 are derived from the California Health and Safety Code
 §§ 11152, 11153(a), and 11156.

1 SECTION 309. DIVERSION PREVENTION AND CONTROL.

2 (a) As used in this section, "diversion" means
3 the transfer of any controlled substance from a licit
4 to an illicit channel of distribution or use.

5 (b) The [appropriate person or agency] shall
6 annually select controlled substances that the
7 [appropriate person or agency] determines to have high
8 rates of abuse or which are identified in descriptive
9 and analytic reports prepared by the United States
10 Attorney General.

11 (c) The [appropriate person or agency] shall
12 regularly prepare and make available to other state
13 regulatory, licensing, and law enforcement agencies a
14 report on the patterns and trends of actual
15 distribution and abuse of each controlled substance
16 selected or identified under subsection (b) and on the
17 patterns and trends of diversion within the state of
18 certain controlled substances selected or identified by
19 the [appropriate person or agency].

20 (d) The [appropriate person or agency] may enter
21 into written agreements with other state or federal
22 agencies. An agreement must specify the roles and
23 responsibilities of each agency with respect to
24 identification, prevention, and control of diversion.
25 The [appropriate person or agency] shall convene
26 periodic meetings for the purpose of coordinating a
27 state diversion prevention and control program. The

1 [appropriate person or agency] shall arrange for mutual
2 cooperation and exchange of information concerning
3 diversion with neighboring states and the federal
4 government.

5 COMMENT ON CREATION OF SECTION

6 Except for subsection (b), this section is
7 patterned after Wisconsin Statutes Section 161.36.
8 Subsection (b) is patterned after 21 U.S.C. 873(c),
9 enacted in 1980. The federal provision is limited to
10 controlled substances included in Schedule II, while
11 subsection (b) is not so limited. In selecting
12 controlled substances it is intended that medical
13 usefulness of the controlled substances be considered.
14 Note that "diversion" as used in Section 303(a)(5)
15 refers to diversion "into other than legitimate
16 medical, scientific, research, or industrial channels."
17

13 ARTICLE IV

14 {OFFENSES AND PENALTIES}

16 SECTION 401. {PROHIBITED ACTS A - PENALTIES.}

17 (a) Except as authorized by this [Act] and
18 ~~except-as-provided-in-Section-409~~, it is unlawful for
19 any person to manufacture, deliver, or possess with
20 intent to manufacture or deliver, a controlled
21 substance.

22 {i} Any person who violates this subsection
23 with respect to:

24 {i} (1) a controlled substance ~~classified~~
25 included in Schedule I or II which is a narcotic drug,
26 is guilty of a crime and upon conviction may be
27

1 imprisoned for not more than [], or fined not
2 more than [], or both;

3 ~~{ii}~~ (2) any other controlled substance
4 ~~classified~~ included in Schedule I, II, or III, is
5 guilty of a crime and upon conviction may be imprisoned
6 for not more than [], fined not more than
7 [], or both;

8 ~~{iii}~~ (3) a substance ~~classified~~ included
9 in Schedule IV, is guilty of a crime and upon
10 conviction may be imprisoned for not more than
11 [], fined not more than [], or
12 both;

13 ~~{iv}~~ (4) a substance ~~classified~~ included in
14 Schedule V, is guilty of a crime and upon conviction
15 may be imprisoned for not more than [], fined
16 not more than [], or both.

17 (b) Except as authorized by this [Act], it is
18 unlawful for any person to create, deliver, or possess
19 with intent to deliver, a counterfeit substance.

20 ~~{i}~~ Any person who violates this subsection
21 with respect to:

22 ~~{i}~~ (1) a counterfeit substance ~~classified~~
23 included in Schedule I or II which is a narcotic drug,
24 is guilty of a crime and upon conviction may be
25 imprisoned for not more than [], fined not
26 more than [], or both;

27

1 ~~{ii}~~ (2) any other counterfeit substance
2 ~~classified~~ included in Schedule I, II, or III, is
3 guilty of a crime and upon conviction may be imprisoned
4 for not more than [], fined not more than [
5], or both;

6 ~~{iii}~~ (3) a counterfeit substance
7 ~~classified~~ included in Schedule IV, is guilty of a
8 crime and upon conviction may be imprisoned for not
9 more than [], fined not more than
10 [], or both;

11 ~~{iv}~~ (4) a counterfeit substance ~~classified~~
12 included in Schedule V, is guilty of a crime and upon
13 conviction may be imprisoned for not more than
14 [], fined not more than [], or
15 both.

16 (c) ~~Except as provided in Section 409, it is~~
17 ~~unlawful for any person knowingly or intentionally to~~
18 ~~possess a controlled substance unless the substance was~~
19 ~~obtained directly from, or pursuant to, a valid~~
20 ~~prescription or order of a practitioner while acting in~~
21 ~~the course of his professional practice, or except as~~
22 ~~otherwise authorized by this Act. -- Any person who~~
23 ~~violates this subsection is guilty of a misdemeanor.~~
24 Except as authorized by law, it is unlawful for any
25 person to possess any piperidine with intent to
26 manufacture phencyclidine, or to possess any piperidine
27 knowing, or having reasonable cause to believe, that

1 the piperidine will be used to manufacture
2 phencyclidine except as authorized by this [Act]. Any
3 person who violates this subsection is guilty of a
4 crime and upon conviction may be imprisoned for not
5 more than [], fined not more than [
6], or both.

7 COMMENT ON AMENDMENT

8 "Included" is used to refer to substances
9 controlled on adoption of the Act (those substances
10 "listed" in Sections 204, 206, 208, 210, and 212) and
11 to substances controlled under Section 601 and
12 administrative action. The substance of the present
13 subsection (c) is transferred to Section 404, as a new
14 penalty section to reflect the fact that mere
15 possession does not relate to the other prohibited acts
16 of Section 401. The new language inserted as
17 subsection (c) is based on the offense in the federal
18 Act with respect to piperidine, added in 1978 and found
19 in 21 U.S.C. 841(d). Actual penalties are not included
20 because it is felt that such a designation is purely a
21 state decision. The penalties imposed under the
22 federal Act are found at 21 U.S.C. 841 and additional
23 federal penalties were created by the Anti-Drug Abuse
24 Act of 1986, Public Law 99-570. The drafting committee
25 may want to consider consolidating subsections (a) and
26 (b) into one subsection.

18
19 SECTION 402. {PROHIBITED ACTS B - PENALTIES.}

20 (a) It is unlawful for any person:

21 (1) who is subject to Article III to
22 distribute or dispense a controlled substance in
23 violation of Section 308;
24 (2) who is a registrant, to manufacture a
25 controlled substance not authorized by ~~his~~ that
26 person's registration, or to distribute or dispense a
27 controlled substance not authorized by ~~his~~ that

1 person's registration to another registrant or other
2 authorized person;

3 (3) to refuse to fail to make, keep, or
4 furnish any record, notification, order form,
5 statement, invoice, or information required under this
6 [Act]; or

7 (4) to refuse an entry into any premises for
8 any inspection authorized by this [Act] ~~or~~.

9 (b) It is unlawful for any manufacturer or
10 distributor, or agent or employee of a manufacturer or
11 distributor, knowingly to deliver a controlled
12 substance for other than a legitimate medical purpose.

13 ~~(5)~~ (c) It is unlawful for any person knowingly
14 to keep or maintain any store, shop, warehouse,
15 dwelling, building, vehicle, boat, aircraft, or other
16 structure or place, which that person knows is resorted
17 to ~~by persons using controlled substances in violation~~
18 ~~of this Act~~ for the purpose of using ~~these substances,~~
19 ~~or which is used for~~ keeping, transporting, or selling
20 them distributing controlled substances in violation of
21 this [Act].

22 (d) Except as authorized by this [Act], it is
23 unlawful to:

24 (1) knowingly open or maintain any place for
25 the purpose of manufacturing any controlled substance;
26 or

27

(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing a controlled substance.

(e) Any person who violates subsection (d) is
guilty of a crime and upon conviction must be
imprisoned for not more than [] years, fined
not more than [], or both, or a fine of
[] for a person other than an individual.

(b) (f) Any Except as provided in subsection
(e), any person who violates this Section section is
guilty of a crime and upon conviction may be imprisoned
for not more than [], fined not more than
[], or both.

COMMENT ON AMENDMENT

Subsection (b) is derived from the California Health and Safety Code § 11153.5(a). Subsection (a)(5) is converted to subsection (c) because the subject matter is not otherwise related to paragraphs (1) through (4), which relate to registrants. "Knows" is added to subsection (c) to clarify that knowledge of the resorting to is required. Subsections (d) and (e) are added in recognition of a similar offense with respect to establishment of manufacturing operations as found in the Anti-Drug Abuse Act of 1986, Public Law 99-570, § 1841. Actual penalties are not included because it is felt that such a designation is purely a state decision. The penalty imposed under the federal Act is found at 21 U.S.C. 842.

1 SECTION 403. {PROHIBITED ACTS C - PENALTIES.}

2 (a) It is unlawful for any person knowingly or
3 intentionally:

4 (1) to distribute as a registrant a controlled
5 substance ~~classified~~ included in ~~Schedules~~ Schedule I
6 or II, except pursuant to an order form as required by
7 Section 307 ~~of this Act~~;

8 (2) to use in the course of the manufacture or
9 distribution of a controlled substance a registration
10 number which that is fictitious, revoked, suspended, or
11 issued to another person;

12 (3) to acquire or obtain possession of a
13 controlled substance by misrepresentation, fraud,
14 forgery, deception, or subterfuge;

15 (4) to furnish false or fraudulent material
16 information in, or omit any material information from,
17 any application, report, or other document required to
18 be kept or filed under this [Act], or any record
19 required to be kept by this [Act]; ~~or~~

20 (5) to make, distribute, or possess any punch,
21 die, plate, stone, or other thing designed to print,
22 imprint, or reproduce the trademark, trade name, or
23 other identifying mark, imprint, or device of another
24 or any likeness of any of the foregoing upon any drug
25 or container or labeling thereof so as to render the
26 drug a counterfeit substance; or

27

(6) to possess a false or fraudulent prescription or order of a practitioner which may be used to obtain a controlled substance.

(b) It is unlawful for any person to use any communication facility in knowingly or intentionally committing or causing or facilitating the commission of any act or acts constituting a felony under this [Act]. Each separate use of a communication facility is a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

(c) Any person who violates this ~~Section~~ section is guilty of a crime and upon conviction may be imprisoned for not more than [], or fined not more than [], or both.

COMMENT ON AMENDMENT

In subsection (a)(1) "included" is used to refer to substances controlled on adoption of the Act (those substances "listed" in Sections 204, 206, 208, 210, and 212) and to substances controlled under Section 601 and administrative action. The new language inserted as subsection (b) prohibits the use of a communication facility for knowingly or intentionally committing certain acts under the Act. The language is based on 21 U.S.C. 843(b), enacted in 1970. Actual penalties are not included because it is felt that such a designation is purely a state decision. The penalty imposed under the federal Act is found at 21 U.S.C. 843.

1 SECTION 404. POSSESSION AS PROHIBITED ACT -
2 PENALTY. It is unlawful for any individual knowingly
3 or intentionally to possess a controlled substance
4 unless the substance was obtained directly from, or
5 pursuant to, a valid prescription or order of a
6 practitioner while acting in the course of the
7 practitioner's professional practice, or except as
8 otherwise authorized by this [Act]. Any individual who
9 violates this section is guilty of a misdemeanor.

10 COMMENT ON CREATION OF SECTION

11 A new Section 404 is created to allow for the
12 placement of the former Section 401(c), concerning
13 possession of a controlled substance, after the
14 sections providing for penalties for other prohibited
15 acts. The former Section 401(c) is treated as a
16 separate section because the offense is mere possession
17 as opposed to the other prohibited acts of Section 401.

16 ~~SECTION 404~~ 405. {PENALTIES UNDER OTHER LAWS.} Any
17 penalty imposed for violation of this {Act} is in
18 addition to, and not in lieu of, any civil or
19 administrative penalty or sanction otherwise authorized
20 by law.

21
22 ~~SECTION 405~~ 406. {BAR TO PROSECUTION.} If a
23 violation of this [Act] is a violation of a ~~Federal~~
24 federal law or the law of another ~~State~~ state, a
25 conviction or acquittal under ~~Federal~~ federal law or
26 the law of another ~~State~~ state for the same act is a
27 bar to prosecution in this State.

1 SECTION 406 407. {DISTRIBUTION TO PERSONS
2 INDIVIDUAL UNDER AGE 18; DISTRIBUTION NEAR SCHOOLS OR
3 COLLEGES.}

4 (a) Any person individual 18 or more years of
5 age ~~or-over~~ who violates Section 401(a) by distributing
6 a controlled substance ~~listed~~ included in Schedules
7 Schedule I or II which is a narcotic drug to a-person
8 an individual under 18 years of age who is at least 3
9 two years ~~his~~ that individual's junior is guilty of
10 [] and upon conviction is punishable by the
11 fine authorized by Section ~~401(a)(1)(i)~~ 401(a)(1), by a
12 term of imprisonment of up to [twice] that authorized
13 by Section ~~401(a)(1)(i)~~ 401(a)(1), or by both. Any
14 person individual 18 or more years of age ~~or-over~~ who
15 violates Section 401(a) by distributing any other
16 controlled substance ~~listed~~ included in Schedules
17 Schedule I, II, III, IV, and or V to a-person an
18 individual under 18 years of age who is at least 3 two
19 years ~~his~~ that individual's junior is guilty of
20 [] and upon conviction is punishable by the
21 fine authorized by ~~Sections-401(a)(1)(i),-(iii),-or~~
22 ~~(iv)~~ Section 401(a)(2), (3), or (4), by a term of
23 imprisonment up to [twice] that authorized by ~~Sections~~
24 ~~401(a)(1)(i),-(iii),-or-(iv)~~ Section 401(a)(2), (3),
25 or (4), or both.

26 (b) Any person who violates Section 401(a),
27 402(c), or 402(d) by distributing a controlled

1 substance to an individual under 18 years of age or by
2 manufacturing a controlled substance, in or on, or
3 within one thousand feet [300.48 meters] of, the real
4 property comprising a public or private elementary,
5 secondary, or vocational school or a public or private
6 college or university is guilty of [] and
7 upon conviction is punishable by a term of
8 imprisonment, or fine, or both not exceeding [twice]
9 that authorized by Section 401(a).

10 (c) Any person who violates subsection (b) after
11 a prior conviction under subsection (b) has become
12 final is punishable by a term of imprisonment of not
13 less than [] years and not more than
14 [] years.

15 [(d) The court may not suspend imposition or
16 execution of a sentence for violation of subsection (c)
17 and probation may not be granted. An individual
18 convicted under subsection (c) is not eligible for
19 parole [under appropriate state law] until the
20 individual has served the minimum sentence required by
21 that subsection.]

22 COMMENT ON AMENDMENT

23 In subsection (a) "included" is used to refer to
24 substances controlled on adoption of the Act (those
25 substances "listed" in Sections 204, 206, 208, 210, and
26 212) and to substances controlled under Section 601 and
27 administrative action. The three-year differential was
reduced to a two-year differential in lieu of accepting
the 18 year old/21 year old age distinction in the
federal Act, 21 U.S.C. 845, which could result in the
stiffer penalty for an 18 year old selling to a 20 year

1 old. Subsections (b), (c), and (d) are added in
2 recognition of similar penalties contained in the
3 federal Act, 21 U.S.C. 845a, as enacted in 1984 and as
4 amended by the Anti-Drug Abuse Act of 1986, Public Law
5 99-570, § 1104 (the "Juvenile Drug Trafficking Act of
6 1986"), which added vocational school, college, and
7 university, and also included "manufacturing."
8 Subsection (c) provides for a special subsequent
9 offense penalty with respect to manufacturing or
10 distributing controlled substances near schools. The
11 penalty in Section 410 for a second offense would not
12 apply in this case. Subsection (d) is bracketed as an
13 alternative for a state that desires to prohibit
14 suspension of imposition or execution of sentence or to
15 limit eligibility for parole.

16 SECTION 408. EMPLOYMENT OR USE OF INDIVIDUAL UNDER
17 18 YEARS OF AGE IN DRUG OPERATIONS.

18 (a) It is unlawful for any individual 18 or more
19 years of age knowingly and intentionally to solicit,
20 induce, encourage, intimidate, employ, hire, or use an
21 individual under 18 years of age to unlawfully
22 transport, carry, sell, give away, prepare for sale, or
23 peddle any controlled substance.

24 (b) Any person who violates subsection (a) is
25 guilty of [] and upon conviction is
26 punishable by a term of imprisonment, or fine, or both,
27 not exceeding [twice] that authorized by Section
28 401(a). Except to the extent a greater minimum
29 sentence is otherwise provided, a term of imprisonment
30 under this subsection must not be less than one year.

31 (c) Any person who violates subsection (a) after
32 a prior conviction under subsection (a) has become
33 final, is punishable by a term of imprisonment of not

1 less than [] years and not more than
2 [] years.

3 (d) Any person who violates subsection (a) by
4 knowingly providing or distributing a controlled
5 substance or a controlled substance analogue to any
6 individual under 18 years of age, or by knowingly
7 employing, hiring, or using an individual known by that
8 person to be 14 years of age or younger, may be
9 imprisoned for not more than [] years or
10 fined not more than [], or both, in addition
11 to any other punishment authorized by this section.

12 [(e) The court may not suspend imposition or
13 execution of a sentence for violation of subsection (c)
14 and probation may not be granted. An individual
15 convicted under subsection (c) is not eligible for
16 parole [under appropriate state law] until the
17 individual has served the mandatory minimum sentence
18 required by that subsection.]

19 COMMENT ON CREATION OF SECTION

20 Section 408 is created to provide for a special
21 offense for using minors in drug operations. The
22 section is derived from similar provisions in the
23 federal Act, as created by the Anti-Drug Abuse Act of
24 1986, Public Law 99-570, § 1102 (the "Juvenile Drug
25 Trafficking Act of 1986) and from the California Health
26 and Safety Code, § 11353.

25 [SECTION ~~407~~ 409. {CONDITIONAL DISCHARGE FOR
26 POSSESSION AS FIRST OFFENSE.} Whenever any person
27 individual who has not previously been convicted

1 previously of any offense under this [Act] or under any
2 statute of the United States or of any ~~State~~ state
3 relating to narcotic drugs, marihuana, or depressant or
4 stimulant, depressant, or hallucinogenic drugs
5 substances, pleads guilty to or is found guilty of
6 possession of a controlled substance under Section
7 ~~404(e)~~ 404, the court, without entering a judgment of
8 guilt and with the consent of the accused, may defer
9 further proceedings and place ~~him~~ that person on
10 probation upon terms and conditions, which may include
11 attendance and successful completion of a treatment and
12 rehabilitation program for drug dependent persons.
13 Upon violation of a term or condition, the court may
14 enter ~~an adjudication~~ a judgment of ~~guilt~~ conviction
15 and proceed as otherwise provided. Upon fulfillment of
16 the terms and conditions, the court shall discharge the
17 person and dismiss the proceedings against ~~him~~ that
18 person. Discharge and dismissal under this ~~Section~~
19 ~~shall be~~ section is without adjudication of guilt and
20 is not a conviction for purposes of this ~~Section~~
21 section or for purposes of disqualifications or
22 disabilities imposed by law upon conviction of a crime,
23 including the additional penalties imposed for second
24 or subsequent convictions under Section 407, 408, or
25 410. Discharge and dismissal restores the individual,
26 in the contemplation of the law, to the status occupied
27 before the arrest or indictment or information. The

1 individual must not be held thereafter under any
2 provision of any law to be guilty of perjury or
3 otherwise giving a false statement by reason of failure
4 to recite or acknowledge that arrest, indictment or
5 information, or trial in response to any inquiry made
6 of that individual for any purpose. [There may be only
7 one discharge and dismissal under this ~~Section~~ section
8 with respect to any person.]]

9 COMMENT ON AMENDMENT

10 The defined term "depressant or stimulant
11 substances," which includes hallucinogenic drugs, is
12 substituted for "stimulant, depressant, or
13 hallucinogenic drugs." The added language on the
14 effect of discharge and dismissal is based on similar
15 language in the federal Act, 21 U.S.C. 844(b)(2). The
16 language on attendance and completion of a treatment
17 and rehabilitation program is to point out a specific
18 condition that could be imposed.

19 [SECTION 408 410. {SECOND OR SUBSEQUENT OFFENSES;
20 CONTINUING CRIMINAL ENTERPRISE.}

21 (a) Any person convicted of a second or
22 subsequent offense under this [Act] may be imprisoned
23 for a term up to twice the term otherwise authorized,
24 fined an amount up to twice that otherwise authorized,
25 or both.

26 {b} For purposes of this ~~Section~~ subsection, an
27 offense is considered a second or subsequent offense,
if, ~~prior-to-his~~ before conviction of the offense, the
offender has at any time been convicted under this
[Act] or under any statute of the United States or of

1 any ~~State~~ state relating to narcotic drugs, marihuana,
2 or depressant, or stimulant, or hallucinogenic drugs
3 substances.

4 ~~(e)~~ This ~~Section~~ subsection does not apply to
5 offenses under subsection (b) or Section 404,
6 407(b), or 408(a).

7 (b) A person who engages in a continuing
8 criminal enterprise is guilty of [] and upon
9 conviction must be sentenced to a term of imprisonment
10 which may not be less than [] and to a fine
11 of not more than []. [The court may not
12 suspend imposition or execution of a sentence for a
13 violation of this subsection and probation may not be
14 granted.] For purposes of this subsection, a person is
15 engaged in a continuing criminal enterprise if:

16 (1) the person violates any provision of this
17 [Act] the punishment for which is a felony; and

18 (2) the violation is a part of a continuing
19 series of violations of this [Act]:

20 (i) which are undertaken by that person
21 in concert with five or more other persons with respect
22 to whom that person occupies a position of organizer, a
23 supervisory position, or any other position of
24 management; and

25 (ii) from which that person [obtained
26 \$100,000 in gross receipts during any 12-month period].

(c) Any person who violates subsection (b) after a prior conviction under subsection (b) has become final, must be sentenced to a term of imprisonment, which may not be less than [] and to a fine of not more than [].

COMMENT ON AMENDMENT

The reference to "depressant, stimulant, or hallucinogenic drugs" is changed to recognize the added definition of "depressant or stimulant substances" to the Act. The added definition includes hallucinogenic drugs. Subsection (b) and Sections 407(b) and 408(a) are excepted from the application of subsection (a) because a second offense penalties for those sections are provided by subsection (c), Section 407(c), and Section 408(c). Subsections (b) and (c) are added to provide for penalties for continuing criminal enterprises, similar to the penalties contained in the federal Act, 21 U.S.C. 848, which was amended by the Anti-Drug Abuse Act of 1986, Public Law 99-570, § 1253 (the "Continuing Drug Enterprise Act of 1986"), which provides for enhanced penalties for principals of continuing drug enterprises. The language on prohibiting suspension of imposition or execution of sentence is bracketed as an alternative for a state. The bracketed language in subsection (b)(2)(ii) is intended to provide a known standard as opposed to the federal language of "obtains substantial income or resources" in 21 U.S.C. 848(b)(2)(B). For discussions of "substantial income" see United States v. Ayala, 769 F.2d 98 (2nd Cir. 1985); United States v. Collier, 358 F.Supp. 1351 (E.D. Mich. 1973).

SECTION-409.--{POSSESSION-AND-DISTRIBUTION-OF
MARIHUANA.}

(a)--Section 401(a) and (c) do not apply to the following acts which, except as provided in subsection (c), are not unlawful:

(1)-possession-of-marihuana-by-an-individual
for-personal-use-and

1 ~~{2}-distribution-of-small-amounts-of-marihuana~~
2 ~~by-an-individual-for-no-remuneration-or-insignificant~~
3 ~~remuneration-not-involving-a-profit-~~

4 ~~{b}--Possession-by-an-individual-of-not-more-than~~
5 ~~one-ounce-of-marihuana-is-presumed-to-be-for-personal~~
6 ~~use-under-subsection-{a}-~~

7 ~~{c}--Notwithstanding-subsection-{a},-it-is~~
8 ~~unlawful-for-any-individual-knowingly-or-intentionally~~
9 ~~to-~~

10 ~~{1}-possess-in-public-more-than-one-ounce-of~~
11 ~~marihuana-~~

12 ~~{2}-distribute-marihuana-in-public,-or~~

13 ~~{3}-smoke-or-otherwise-ingest-marihuana-in~~
14 ~~public--A-person-who-violates-this-subsection-is~~
15 ~~guilty-of-a-misdemeanor-and-upon-conviction-may-be~~
16 ~~finned-not-more-than-{-----}-~~

17 ~~{d}--Any-amount-of-marihuana-posessed-or~~
18 ~~distributed-in-public-is-subject-to-summary-seizure~~
19 ~~under-Section-505{f}-~~

20 ~~{e}--The-use-of-a-conveyance-to-facilitate-the~~
21 ~~acts-described-in-subsection-{a}-does-not-subject-the~~
22 ~~conveyance-to-forfeiture-under-Section-505{a}{4}-~~

23 COMMENT ON DELETION

24 Section 409, adopted in 1973 as an amendment to
25 the Act, is deleted in recognition of the failure of
26 any state to adopt the section and the recommendations
27 of the most recent national commission on the issue of
 the harmful effects of marihuana.

1 [SECTION 411. TREATMENT OPTION FOR VIOLATION OF
2 [ACT]. Whenever an individual pleads guilty to or is
3 found guilty of any violation of this [Act], the court
4 may enter a judgment of conviction and may impose a
5 sentence as authorized by this [Act], or with the
6 consent of the accused and with the consent of a
7 treatment facility having special inpatient or
8 outpatient programs for the treatment of drug dependent
9 persons, may place the individual on probation upon
10 terms and conditions, including attendance and
11 successful completion of a treatment and rehabilitation
12 program of that facility, or may impose a combination
13 of a sentence and probation. Treatment must be for the
14 period the treatment facility considers necessary.
15 Treatment or a combination of a sentence and probation
16 including treatment may not exceed the maximum sentence
17 allowable unless the convicted individual consents to
18 continued treatment. Upon violation of a term or
19 condition, including failure to attend and successfully
20 complete the treatment program, the court may revoke
21 the probation and proceed as otherwise provided. Upon
22 fulfillment of the terms and conditions, including
23 attendance and successful completion of the treatment
24 program, the court shall terminate the probation.]

25 COMMENT ON CREATION OF SECTION

26 Section 411 is created to provide for a treatment
27 option in addition to or as an alternative to
 imprisonment. See 18 U.S.C. 3553, 3651 for factors

1 used by federal courts with respect to requiring
2 participation in treatment programs. This section is
3 bracketed so that states that have a general statutory
provision allowing commitment to a treatment facility
need not use this section.

4
5 ARTICLE V

6 {ENFORCEMENT AND ADMINISTRATIVE PROVISIONS}

7
8 [SECTION 501. {POWERS OF ENFORCEMENT PERSONNEL.}

9 (a) Any officer or employee of the [appropriate
10 agency] designated by the [appropriate person] may:

11 (1) carry firearms in the performance of ~~his~~
12 the officer's or employee's official duties;

13 (2) execute and serve search warrants, arrest
14 warrants, administrative inspection warrants,
15 subpoenas, and summonses issued under the authority of
16 this State;

17 (3) make arrests without warrant for any
18 offense under this [Act] committed in ~~his~~ the officer's
19 or employee's presence, or if ~~he~~ the officer or
20 employee has probable cause to believe that the ~~person~~
21 individual to be arrested has committed or is
22 committing a violation of this [Act] which may
23 constitute a felony;

24 (4) make seizures of property pursuant to this
25 [Act]; ~~or~~ and

26 (5) perform other law enforcement duties as
27 the [appropriate person] designates.]

COMMENT ON AMENDMENT

This section is bracketed to provide an option to consider in granting powers to personnel of the appropriate agency, particularly powers normally associated with law enforcement personnel, e.g., the carrying of firearms.

SECTION 502. ~~{~~ADMINISTRATIVE INSPECTIONS AND WARRANTS.~~}~~

(a) ~~issuance~~ The procedure for issuance and execution of administrative inspection warrants ~~shall~~ be is as follows:

(1) A [~~judge of a State~~ state court of record, or any ~~State~~ state magistrate] within ~~his~~ [the judge's or magistrate's] jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this [Act] or rules ~~hereunder~~ adopted under this [Act], and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this [Act] or rules ~~hereunder~~ adopted under this [Act], sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant~~†~~.

(2) A warrant ~~shall~~ may issue only upon an affidavit of a designated officer or employee having

1 knowledge of the facts alleged, sworn to before the
2 [judge or magistrate] and establishing the grounds for
3 issuing the warrant. If the [judge or magistrate] is
4 satisfied that grounds for the application exist or
5 that there is probable cause to believe they exist, he
6 [the judge or magistrate] shall issue a warrant
7 identifying the area, premises, building, or conveyance
8 to be inspected, the purpose of the inspection, and, if
9 appropriate, the type of property to be inspected, if
10 any. The warrant shall must:

11 (i) state the grounds for its issuance and
12 the name of each ~~person~~ individual whose affidavit has
13 been taken in support thereof;

14 (ii) be directed to ~~a-person~~ an individual
15 authorized by Section 501 to execute it;

16 (iii) command the ~~person~~ individual to whom
17 it is directed to inspect the area, premises, building,
18 or conveyance identified for the purpose specified and,
19 if appropriate, direct the seizure of the property
20 specified;

21 (iv) identify the item or types of property
22 to be seized, if any; and

23 (v) direct that it be served during normal
24 business hours and designate the judge or magistrate to
25 whom it shall be returned.

26 (3) A warrant issued pursuant to this ~~Section~~
27 section must be executed and returned within ~~10~~ ten

1 days ~~of~~ after its date unless, upon a showing of a need
2 for additional time, the court orders otherwise. If
3 proerty is seized pursuant to a warrant, a copy ~~shall~~
4 must be given to the person from whom or from whose
5 premises the property is taken, together with a receipt
6 for the property taken. The return of the warrant
7 ~~shall~~ must be made promptly, accompanied by a written
8 inventory of any property taken. The inventory ~~shall~~
9 must be made in the presence of the ~~person~~ individual
10 executing the warrant and of the person from whose
11 possession or premises the property was taken, if
12 present, or in the presence of at least one credible
13 ~~person~~ individual other than the ~~person~~ individual
14 executing the warrant. A copy of the inventory ~~shall~~
15 must be delivered to the person from whom or from whose
16 premises the property was taken and to the applicant
17 for the warrant.

18 (4) The [judge or magistrate] who has issued
19 a warrant shall attach ~~thereto~~ to the warrant a copy of
20 the return and all papers returnable in connection
21 therewith and file them with the clerk of the
22 [appropriate ~~State~~ state court for the judicial
23 district] in which the inspection was made.

24 (b) The [appropriate person or agency] may make
25 administrative inspections of controlled premises in
26 accordance with the following provisions:
27

1 (1) For purposes of this ~~Section-only~~
2 subsection, "controlled premises" means:

3 (i) places where persons registered or
4 exempted from registration requirements under this
5 [Act] are required to keep records; and

6 (ii) places including factories,
7 warehouses, establishments, and conveyances in which
8 persons registered or exempted from registration
9 requirements under this [Act] are permitted to hold,
10 manufacture, compound, process, sell, deliver, or
11 otherwise dispose of any controlled substance.

12 (2) When authorized by an administrative
13 inspection warrant issued pursuant to subsection (a),
14 an officer or employee designated by the [appropriate
15 person or agency], upon presenting the warrant and
16 appropriate credentials to the owner, operator, or
17 agent in charge, may enter controlled premises for the
18 purpose of conducting an administrative inspection.

19 (3) When authorized by an administrative
20 inspection warrant, an officer or employee designated
21 by the [appropriate person or agency] may:

22 (i) inspect and copy records required by
23 this [Act] to be kept;

24 (ii) inspect, within reasonable limits and
25 in a reasonable manner, controlled premises and all
26 pertinent equipment, finished and unfinished material,
27 containers and labeling found therein, and, except as

1 provided in ~~subsection-(b)-(5)~~ paragraph (5), all other
2 things therein, including records, files, papers,
3 processes, controls, and facilities bearing on
4 violation of this [Act]; and

5 (iii) inventory any stock of any controlled
6 substance therein and obtain samples thereof¹.

7 (4) This ~~Section~~ section does not prevent the
8 inspection without a warrant of books and records
9 pursuant to an administrative subpoena issued in
10 accordance with [insert appropriate ~~State-Code~~ state
11 code section], nor does it prevent entries and
12 administrative inspections, including seizures of
13 property, without a warrant:

14 (i) if the owner, operator, or agent in
15 charge of the controlled premises consents;

16 (ii) in situations presenting imminent
17 danger to health or safety;

18 (iii) in situations involving inspection of
19 conveyances if there is reasonable cause to believe
20 that the mobility of the conveyance makes it
21 impracticable to obtain a warrant;

22 (iv) in any other exceptional or emergency
23 circumstance where time or opportunity to apply for a
24 warrant is lacking; or

25 (v) in all other situations in which a
26 warrant is not constitutionally required¹.

1 (5) An inspection authorized by this ~~Section~~
2 ~~shall~~ section may not extend to financial data, sales
3 data, other than shipment data, or pricing data unless
4 the owner, operator, or agent in charge of the
5 controlled premises consents in writing.

6
7 SECTION 503. {INJUNCTIONS.}

8 (a) The [trial courts of this State] have [may
9 exercise] jurisdiction to restrain or enjoin violations
10 of this [Act].

11 (b) The defendant may demand trial by jury for
12 an alleged violation of an injunction or restraining
13 order under this ~~Section~~ section.

14
15 SECTION 504. {COOPERATIVE ARRANGEMENTS AND
16 CONFIDENTIALITY.}

17 (a) The [appropriate person or agency] shall
18 cooperate with ~~Federal~~ federal and other ~~State~~ state
19 agencies in discharging ~~his-{its}~~ the [appropriate
20 person's or agency's] responsibilities concerning
21 traffic in controlled substances and in suppressing the
22 abuse of controlled substances. To this end, ~~he-{it}~~
23 the [appropriate person or agency] may:

24 (1) arrange for the exchange of information
25 among governmental officials concerning the use and
26 abuse of controlled substances;

1 (2) coordinate and cooperate in training
2 programs concerning controlled substance law
3 enforcement at local and ~~State~~ state levels;
4 (3) cooperate with the Bureau Drug Enforcement
5 Administration by establishing a centralized unit to
6 accept, catalog, file, and collect statistics,
7 including records of drug dependent persons and other
8 controlled substance law offenders within the ~~State~~
9 state, and make the information available for ~~Federal~~
10 federal, ~~State~~ state, and local law enforcement
11 purposes. ~~He-~~it~~-shall~~ The [appropriate person or
12 agency] may not furnish the name or identity of a
13 patient or research subject whose identity could not be
14 obtained under subsection (c); and
15 (4) conduct programs of eradication aimed at
16 destroying wild or illicit growth of plant species from
17 which controlled substances may be extracted.
18 (b) Results, information, and evidence received
19 from the Bureau Drug Enforcement Administration
20 relating to the regulatory functions of this [Act],
21 including results of inspections conducted by it, may
22 be relied and acted upon by the [appropriate person or
23 agency] in the exercise of its regulatory functions
24 under this [Act].
25 (c) A practitioner engaged in medical practice
26 or research is not required or compelled to furnish the
27 name or identity of a patient or research subject to

1 the [appropriate person or agency], nor may he the
2 practitioner be compelled in any State state or local
3 civil, criminal, administrative, legislative, or
4 other proceedings to furnish the name or identity of an
5 individual that the practitioner is obligated to keep
6 confidential.

7
8 SECTION 505. {FORFEITURES.}

9 (a) The following are subject to forfeiture:

10 (1) all controlled substances which that have
11 been manufactured, distributed, dispensed, or acquired
12 in violation of this [Act];

13 (2) all raw materials, products, and equipment
14 of any kind which are used, or intended for use, in
15 manufacturing, compounding, processing, delivering,
16 importing, or exporting any controlled substance in
17 violation of this [Act];

18 (3) all property which that is used, or
19 intended for use, as a container for property described
20 in paragraphs paragraph (1) or (2);

21 (4) all conveyances, including aircraft,
22 vehicles, or vessels, which are used, or intended for
23 use, to transport, or in any manner to facilitate the
24 transportation, for the purpose of sale or receipt of
25 property described in paragraph (1) or (2), but:

26 (i) no conveyance used by any person as a
27 common carrier in the transaction of business as a

1 common carrier is subject to forfeiture under this
2 ~~Section~~ paragraph unless it appears is shown by clear
3 and convincing evidence that the owner or other person
4 in charge of the conveyance is a consenting party or
5 privy to a violation of this [Act];

6 (ii) no conveyance is subject to forfeiture
7 under this ~~Section~~ paragraph by reason of any act or
8 omission ~~established-by-the-owner-thereof-to-have-been~~
9 committed or omitted without ~~his~~ the owner's knowledge
10 or consent and the state has the burden of proof by
11 clear and convincing evidence of the owner's knowledge
12 or consent; and

13 (iii) a conveyance is not subject to
14 forfeiture for a violation of Section ~~401(e) and~~ 404

15 ~~(iv)-a-forfeiture-of-a-conveyance~~
16 ~~encumbered-by-a-bona-fide-security-interest-is-subject~~
17 ~~to-the-interest-of-the-secured-party-if-he-neither-had~~
18 ~~knowledge-of-nor-consented-to-the-act-or-emission.~~

19 (5) all books, records, and research products
20 and materials, including formulas, microfilm, tapes,
21 and data which are used, or intended for use, in
22 violation of this [Act].

23 (6) all moneys, negotiable instruments,
24 securities, or other things of value furnished or
25 intended to be furnished by any person in exchange for
26 a controlled substance in violation of this [Act], all
27 proceeds traceable to that exchange, and all moneys,

1 negotiable instruments, and securities used or intended
2 to be used to facilitate any violation of this [Act],
3 but property is not forfeited under this paragraph, to
4 the extent of the interest of an owner, by reason of
5 any act or omission committed or omitted without the
6 owner's knowledge or consent. The state has the burden
7 of proof by clear and convincing evidence of the
8 owner's knowledge or consent.

9 (7) all real property, including any right,
10 title, and interest in the whole of any lot or tract of
11 land and any appurtenances or improvements, that is
12 used, or intended to be used, in any manner or part, to
13 commit, or to facilitate the commission of, a violation
14 of this [Act] punishable by more than one year's
15 imprisonment, but property is not forfeited under this
16 paragraph, to the extent of the interest of an owner,
17 by reason of any act or omission committed or omitted
18 without the owner's knowledge or consent. The state
19 has the burden of proof by clear and convincing
20 evidence of the owner's knowledge or consent.

21 (8) all controlled substances that have been
22 possessed in violation of this [Act].

23 (b) Property is not subject to forfeiture under
24 subsection (a), to the extent of an interest of an
25 owner, by reason of any act or omission committed or
26 omitted without the owner's knowledge or consent. The
27 state has the burden of proof by clear and convincing

1 evidence of the owner's knowledge or consent. Property
2 transferred to a third party in return for services
3 received or to be received is not subject to forfeiture
4 under subsection (a), unless the state shows by clear
5 and convincing evidence that the transfer was
6 fraudulent. Property transferred to a third party in
7 return for services received or to be received may not
8 be seized prior to a determination by the [appropriate
9 court] that the state has presented clear and
10 convincing evidence that the transfer was fraudulent.

11 Property subject to forfeiture under this [Act] may be
12 seized by the [appropriate person or agency] upon
13 process issued by any [appropriate court] having
14 jurisdiction over the property. Seizure without
15 process may be made if:

16 (1) the seizure is incident to an arrest or a
17 search under a search warrant or an inspection under an
18 administrative inspection warrant;

19 (2) the property subject to seizure has been
20 the subject of a ~~prior~~ previous judgment in favor of
21 the State state in a criminal injunction or forfeiture
22 proceeding based upon this [Act];

23 (3) the [appropriate person or agency] has
24 probable cause to believe that the property is directly
25 or indirectly dangerous to health or safety; or

26 (4) the [appropriate person or agency] has
27 probable cause to believe that the property was used or

1 is intended to be used in violation of this [Act].

2 (c) In the event of seizure pursuant to
3 subsection (b), proceedings under subsection (d) ~~shall~~
4 must be instituted promptly.

5 (d) Property taken or detained under this
6 ~~Section-shall~~ section is not be subject to replevin,
7 but is subject to the bona fide interests of secured
8 parties or lienholders who had no knowledge of or did
9 not consent to the act or omission subjecting the
10 property to forfeiture. The state has the burden of
11 proof by clear and convincing evidence of the secured
12 party's or lienholder's knowledge or consent. The
13 property is deemed to be in custody of the [appropriate
14 person or agency] subject only to the orders and
15 decrees of the [court having jurisdiction over the
16 forfeiture proceedings]. ~~When~~ If property is seized
17 under this [Act], the [appropriate person or agency]
18 may:

19 (1) place the property under seal;

20 (2) remove the property to a place designated
21 by ~~him-fitt~~ the [appropriate person or agency]; or

22 (3) deliver the property to the owner if the
23 act or omission subjecting the property to forfeiture
24 was committed or omitted without the owner's knowledge
25 or consent;

26 (4) deliver the property to the secured party
27 if the property is encumbered by a bona fide security

1 interest that is greater than the fair market value of
2 the property and if the act or omission subjecting the
3 property to forfeiture was committed or omitted without
4 the secured party's knowledge or consent;

5 (5) deliver the property to the lienholder if
6 the property is subject to a bona fide lien that is
7 greater than the fair market value of the property and
8 the act or omission subjecting the property to
9 forfeiture was committed or omitted without the
10 lienholder's knowledge or consent; or

11 (6) require the [appropriate administrative
12 agency] to take custody of the property and remove it
13 to an appropriate location for disposition in
14 accordance with law.

15 (e) When property is forfeited under this [Act]
16 the [appropriate person or agency] may:

17 (1) retain it for official use or transfer the
18 custody or ownership of any forfeited property to any
19 federal, state, or local agency. The [appropriate
20 person or agency] shall ensure the equitable transfer
21 of any forfeited property to the appropriate federal,
22 state, or local law enforcement agency so as to reflect
23 generally the contribution of that agency participating
24 directly in any of the acts that led to the seizure or
25 forfeiture of the property. A decision to transfer the
26 property is not subject to review;

1 (2) sell that which is not required to be
2 destroyed by law and which is not harmful to the
3 public. The proceeds ~~shall~~ of any sale and any moneys
4 forfeited under this [Act] must be used for payment of
5 all proper expenses of the proceedings for forfeiture
6 and sale, including expenses of seizure, maintenance of
7 custody, advertising, and court costs, and for
8 satisfaction of any bona fide security interest or
9 lien;

10 (3) require the [appropriate administrative
11 agency] to take custody of the property and remove it
12 for disposition in accordance with law; or

13 (4) forward it to the Bureau Drug Enforcement
14 Administration for disposition.

15 (f) Controlled substances ~~listed~~ included in
16 Schedule I ~~that~~ which are possessed, transferred, sold,
17 or offered for sale in violation of this [Act] are
18 contraband and ~~shall~~ must be seized and summarily
19 forfeited to the State state. Controlled substances
20 ~~listed~~ included in Schedule I, which are seized or come
21 into the possession of the State state, the owners of
22 which are unknown, are contraband and ~~shall-be~~ are
23 summarily forfeited to the State state.

24 (g) Species of plants from which controlled
25 substances included in ~~Schedules~~ Schedule I and or II
26 may be derived which have been planted or cultivated in
27 violation of this [Act], or of which the owners or

1 cultivators are unknown, or which are wild growths, may
2 be seized and summarily forfeited to the State state.

3 (h) The failure, upon demand by the [appropriate
4 person or agency], or ~~his-{its}~~ the [appropriate
5 person's or agency's] authorized agent, of the person
6 in occupancy or in control of land or premises upon
7 which the species of plants are growing or being
8 stored, to produce an appropriate registration, or
9 proof that ~~he~~ the person is the holder thereof,
10 constitutes authority for the seizure and forfeiture of
11 the plants.

12 (i) Upon motion and for good cause shown, the
13 court may stay a civil forfeiture proceeding that is
14 related to an indictment or information alleging a
15 violation of this [Act].

16 [(j) In addition to the venue provided for under
17 [the appropriate state law] or any other provision of
18 law, in the case of property of a defendant charged
19 with a violation that is the basis for forfeiture of
20 the property under this section, a proceeding for
21 forfeiture under this section may be brought in the
22 [judicial district] in which the defendant owning such
23 property is found or in the [judicial district] in
24 which the criminal prosecution is brought.]

25 COMMENT ON AMENDMENT

26 Subsection (a)(4)(iv) is deleted because a
27 provision protecting secured parties generally is added
to subsection (d). In subsection (a), paragraphs (6),

(7), and (8) have been added to provide for forfeiture of the same types of property forfeited under the federal Act, 21 U.S.C. 881(a). Subsections (a) and (b) are revised to protect owners who did not have knowledge of or consent to the prohibited act and third parties who render services. Subsection (b) specifically requires a proceeding prior to seizing property alleged to be fraudulently transferred in return for services received as a means to protect the defendant's right to counsel under the Sixth Amendment. Subsection (d) is revised to provide for delivery of the property to innocent owners, secured parties, or lienholders, if the value of the security interest is greater than the market value of the property. Subsection (e)(1) is revised to allow for transfer of forfeited property to another agency in order to "share the wealth" with an agency participating in the seizure or forfeiture of the property. This provision is based on a similar provision in the federal Act, 21 U.S.C. 881(e). Subsection (e)(2) is revised to provide for satisfaction of security interests or liens. In subsections (f) and (g) "included" is used to refer to substances controlled on adoption of the Act (those substances "listed" in Sections 204, 206, 208, 210, and 212) and to substances controlled under Section 601 and administrative action. Subsections (i) and (j) are based on similar provisions in the federal Act, 21 U.S.C. 881(i) and (j). Subsection (j) is bracketed as an alternative for a state.

SECTION 506. {BURDEN OF PROOF; LIABILITIES.}

(a) It is not necessary for the ~~State~~ state to negate any exemption or exception in this [Act] in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this [Act]. The Except as other provided in this [Act], the burden of proof going forward with evidence of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration

1 or order form issued under this [Act], ~~he~~ the person is
2 presumed not to be the holder of the registration or
3 form. The burden of ~~proof~~ going forward with evidence
4 with respect to the registration or order form is upon
5 ~~his-to-rebut-the-presumption~~ that person.

6 (c) No civil or criminal liability is imposed by
7 this [Act] upon any authorized ~~State~~ state, county, or
8 municipal officer, lawfully engaged in the ~~lawful~~
9 ~~performance~~ enforcement of ~~his-duties~~ this [Act].

10 COMMENT ON AMENDMENT

11 Subsection (a) would not negate the requirements
12 in Section 505 with respect to the burden of proof by
13 the state. Subsection (c) is revised to clarify that
14 immunity from civil or criminal liability only extends
15 to enforcement of the Act, not to performance of
16 duties.

17 SECTION 507. {JUDICIAL REVIEW.} All final
18 determinations, findings, and conclusions of the
19 [appropriate person or agency] under this [Act] are
20 ~~final-and-conclusive-decisions-of-the-matters-involved.~~
21 ~~Any-person-aggrieved-by-the-decision-may-obtain~~ subject
22 to judicial review ~~of-the-decision-in-the-{appropriate~~
23 ~~State-Court}---Findings-of-fact-by-the-{appropriate~~
24 ~~person-or-agency}7-if-supported-by-substantial~~
25 evidence, are conclusive pursuant to [the State
26 Administrative Procedure Act].
27

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COMMENT ON AMENDMENT

This section is revised in recognition of state administrative agencies practice acts, which generally provide for judicial review of agency decisions. The Uniform Law Commissioners' Model State Administrative Procedure Act (1981) provides for judicial review of final, and in some cases nonfinal, decisions of administrative agencies and for the scope of review. Paragraph 5-116(c)(7) of the model Act establishes the "substantial evidence on the whole record" test for judicial review of determinations of fact. Other standards are the "clearly erroneous" test or the "preponderance of evidence" standard.

SECTION 508. {EDUCATION AND RESEARCH.}

(a) The [appropriate person or agency] shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs ~~he-{it}~~ the [appropriate person or agency] may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of

1 educational programs on misuse and abuse of controlled
2 substances;

3 (5) disseminate the results of research on
4 misuse and abuse of controlled substances to promote a
5 better public understanding of what problems exist and
6 what can be done to combat them; and,

7 (6) assist in the education and training of
8 ~~State~~ state and local law enforcement officials in
9 their efforts to control misuse and abuse of controlled
10 substances.

11 (b) The [appropriate person or agency] shall
12 encourage research on misuse and abuse of controlled
13 substances. In connection with the research, and in
14 furtherance of the enforcement of this [Act], ~~he-~~it~~~~
15 the [appropriate person or agency] may:

16 (1) establish methods to assess accurately the
17 effects of controlled substances and identify and
18 characterize those with potential for abuse;

19 (2) make studies and undertake programs of
20 research to:

21 (i) develop new or improved approaches,
22 techniques, systems, equipment, and devices to
23 strengthen the enforcement of this [Act];

24 (ii) determine patterns of misuse and abuse
25 of controlled substances and the social effects
26 thereof; and,
27

1 (iii) improve methods for preventing,
2 predicting, understanding, and dealing with the misuse
3 and abuse of controlled substances; and

4 (3) enter into contracts with public agencies,
5 institutions of higher education, and private
6 organizations or individuals for the purpose of
7 conducting research, demonstrations, or special
8 projects which bear directly on misuse and abuse of
9 controlled substances.

10 (c) The [appropriate person or agency] may enter
11 into contracts for educational and research activities
12 without performance bonds and without regard to
13 [appropriate code section].

14 (d) The [appropriate person or agency] may
15 authorize persons engaged in research on the use and
16 effects of controlled substances to withhold the names
17 and other identifying characteristics of individuals
18 who are the subjects of the research. Persons who
19 obtain this authorization are not compelled in any
20 civil, criminal, administrative, legislative, or other
21 proceeding to identify the individuals who are the
22 subjects of research for which the authorization was
23 obtained.

24 (e) The [appropriate person or agency] may
25 authorize the possession and distribution of controlled
26 substances by persons engaged in research. Persons who
27 obtain this authorization are exempt from State state

1 prosecution for possession and distribution of
2 controlled substances to the extent of the
3 authorization.

4
5 ARTICLE VI
6 {MISCELLANEOUS}
7

8 SECTION 601. {PENDING PROCEEDINGS.}

9 (a) Prosecution for any violation of law
10 occurring prior to the effective date of this [Act] is
11 not affected or abated by this [Act]. If the offense
12 being prosecuted is similar to one set out in Article
13 IV of this [Act], then the penalties under Article IV
14 apply if they are less than those under prior law.

15 (b) Civil seizures or forfeitures and injunctive
16 proceedings commenced prior to the effective date of
17 this [Act] are not affected by this [Act].

18 (c) All administrative proceedings pending under
19 prior laws ~~which~~ that are superseded by this [Act]
20 ~~shall~~ must be continued and brought to a final
21 determination in accord with the laws and rules in
22 effect prior to the effective date of ~~the~~ this [Act].
23 Any substance controlled under prior law but which is
24 not listed ~~within Schedules I through V,~~ in Section
25 204, 206, 208, 210, or 212 is automatically controlled
26 without further proceedings and ~~shall~~ must be ~~listed~~
27 included in the appropriate schedule.

1 (d) The [appropriate person or agency] shall
2 initially permit persons to register who own or operate
3 any establishment engaged in the manufacture,
4 distribution, or dispensing of any controlled substance
5 prior to the effective date of this [Act] and who are
6 registered or licensed by the ~~State~~ state.

7 (e) This [Act] applies to violations of law,
8 seizures and forfeiture, injunctive proceedings,
9 administrative proceedings, and investigations which
10 occur following its effective date.

11 COMMENT ON AMENDMENT

12 In subsection (c) "included" is used to refer to
13 substances controlled on adoption of the Act (those
14 substances "listed" in Sections 204, 206, 208, 210, and
15 212) and to substances controlled under Section 601 and
16 administrative action.

17 SECTION 602. {CONTINUATION OF RULES.} Any orders
18 and rules ~~promulgated~~ adopted under any law affected by
19 this [Act] and in effect on the effective date of this
20 [Act] and not in conflict with ~~it~~ this [Act] continue
21 in effect until modified, superseded, or repealed.

22 SECTION 603. {UNIFORMITY OF INTERPRETATION.} This
23 [Act] ~~shall~~ must be so applied and construed as to
24 effectuate its general purpose to make uniform the law
25 with respect to the subject of this [Act] among ~~these~~
26 ~~States-which-enact~~ states enacting it.

27

SECTION 604. {SHORT TITLE.} This [Act] may be cited as the Uniform Controlled Substances Act (198).

SECTION 605. {SEVERABILITY.} If any provision of this [Act] or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 606. {REPEALERS.} The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before the effective date of this Act:

[List statutes to be repealed].

SECTION 607. {EFFECTIVE DATE.} This Act ~~shall take~~ takes effect on ~~the first day after the beginning of the seventh month following the date of its enactment~~ [].

